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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 247. 26

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, APPELLANT,

vs.

RANSOM PHELPS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED OCTOBER 25, 1886.

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INDEX.

	Original.	Print.
Caption	*a*	1
Bill of complaint	1	1
Order for chancery subpœna	29	38
Chancery subpœna	29	39
Alias subpœna	32	39
Marshal's return	32*a*	39
Order for appearance of defendant	33	41
Answer	33	41
Replication	36	42
Stipulation as to facts, &c.	36½	42
Certificate of Commissioner of General Land Office, May, 1884	37	44
Telegram from Commissioner to register at Minneapolis, March 7, 1857	40	45
Telegram from Commissioner to register at Stillwater, March 7, 1857	41	46
Telegram from Commissioner to register at Sauk Rapids, March 7, 1857	42	46
Circular of General Land Office, June 22, 1857	43	46
Letter of Commissioner of Land Office to Governor of Minnesota, July 21, 1857	44	47
Letter of Commissioner to register at Minneapolis, August 24, 1857	46	48

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	Original.	Print.
Letter of Commissioner to register at Sauk Rapids, August 24, 1857	47	48
Letter of Causin to Commissioner of Land Office, January 6, 1858	48	49
Letter of Commissioner to register at Sauk Rapids, March 25, 1858	49	49
Letter of Commissioner to Secretary of Interior, April 3, 1858	50	49
Letter of Secretary of Interior to Commissioner, May 8, 1858	52	50
Letter of Secretary of Interior to Commissioner, August 29, 1859	53	51
Letter of Secretary of Interior to Commissioner, December 1, 1862	55	52
Letter of Commissioner of Land Office to Becker, May 25, 1864	60	54
Letter of Causin to Commissioner of Land Office, April 16, 1868	62	55
Letter of Commissioner of Land Office to Causin, May 4, 1868	64	56
Letter of Commissioner to register at St. Cloud, August 14, 1868	65	56
Letter of Commissioner to register at Greenleaf, August 14, 1868	66	57
Letter of Commissioner to register at St Cloud, March 17, 1869	67	57
Letter of Commissioner to register at Alexandria, April 12, 1869	68	58
Letter of Commissioner to register at Alexandria, May 25, 1869	70	58
Letter of Trott to Commissioner of Land Office, September 7, 1871	71	59
Letter of Commissioner to Trott, November 24, 1871	73	60
Letter of Commissioner to Totten, April 24, 1872	76	61
Letter of Commissioner to register at Vermillion, May 2, 1872	78	62
Letter of Acting Commissioner to register at Sioux Falls, June 19, 1873	80	62
Letter of Commissioner to register at Sioux Falls, September 2, 1874	83	64
Stipulation and order for transmission of maps	85	65
Order submitting cause	87	66
Opinion	87	66
Order for decree dismissing bill	94	70
Final decree and order allowing appeal	95	70
Bond	96	71
Clerk's certificate	98	72

a United States Circuit Court, District of Minnesota. In Equity.

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, Appellant,
vs.
RANSOM PHELPS, Appellee.

Return to U. S. Supreme Court.

R. B. Galusha, S. U. Pinney, and H. R. Bigelow, solicitors and of counsel for appellants; W. P. Clough, solicitor and of counsel for appellee.

1 In the Circuit Court of the United States for the District of Minnesota. In Equity.

To the honorable the judges of the circuit court of the United States for the district of Minnesota:

The Saint Paul, Minneapolis and Manitoba Railway Company, a corporation created and existing under and by virtue of the laws of the State of Minnesota, brings this its bill of complaint against Ransom Phelps, of the city of Breckenridge, in the State of Minnesota; and thereupon your orator complains and says:

Grant of March 3, 1857.

That by section one of an act of Congress entitled "An act making a grant of lands to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3, 1857, there was then granted to the Territory of Minnesota for the purpose of aiding in the constructing of railroads from Stillwater, by way of Saint Paul and Saint Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via Saint Cloud and Crow Wing to the navigable waters of the Red River of the North, at such point as the Legislature of said Territory might determine, from Saint Paul and from Saint Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi to the southern boundary of the Territory in the direction of the mouth of the Big Sioux river, with a branch via Faribault to the north line of the State of Iowa, west of range sixteen; from Winona, via Saint Peter, to a point on the Big Sioux river south of the forty-fifth parallel of the north latitude; also from La Cresent, via Target Lake, up the valley of Root river to a point of junction with the last-mentioned road, east of range seventeen—every alternate section of land designated by odd numbers, six sections in width, on each side of each said roads and branches; but in case it should appear that the United States had, when the lines or routes of said roads and

branches should be definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or that the right of pre-emption had attached to the same, then it should be lawful for any agent or agents appointed by the Governor of said Territory or future State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land in alternate sections or parts of sections as should be equal to such lands as the United States had sold or otherwise appropriated or to which the rights of pre-emption had attached as aforesaid; which lands (thus selected in lieu of those sold and to which pre-emption rights had attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid) should be held by the Territory or future State of Minnesota for the use and purpose aforesaid: Provided, That the land to be so located should in no case be further than fifteen miles from the lines of said roads or branches and selected for and on account of each of said roads or branches: Provided further, That the lands thereby
2 granted for and on account of said roads and branches, severally, should be exclusively applied in the construction of that road for and on account of which such lands were thereby granted and should be disposed of only as the work progressed, and that the same should be applied to no other purpose whatsoever: And provided further, That any and all lands theretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever be, and the same were thereby, reserved to the United States from the operation of such act, except so far as it might be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only should be granted, subject to the approval of the President of the United States; that in and by section two of said act it was further enacted that the sections and parts of sections of lands which by such grants should remain to the United States, within six miles on each side of said roads and branches, should not be sold for less than double the minimum price of the public lands when sold, nor should any of said lands become subject to private entry until the same should have been first offered at public sale at the increased price; that in and by section three of said act it was further enacted that the said lands by said act granted to said Territory or future State should be subject to the future disposal of the Legislature thereof, for the purposes in said act expressed and no other, and that the said railroads and branches should be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States; that in and by section four of said act it was further enacted that the land by said act granted to said Territory or future State should be disposed of by said Territory or future State only in the manner following—that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads and branches

and included within a continuous length of twenty miles of each of said roads and branches might be sold; and when the Governor of said Territory or future State should certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches were completed, then another quantity of land by said act granted, not to exceed one hundred and twenty sections for each of said roads and branches having twenty continuous miles completed as aforesaid and included within a continuous length of twenty miles of each of such roads or branches might be sold, and so, from time to time, until said roads and branches should be completed, and if any of said roads or branches was not completed within ten years no further sale should be made, and that the lands unsold should revert to the United States.

Territorial act of May 22, 1857, creating the M. & P. R. R. Co.

And your orator further states and shows that the Legislative Assembly of the said Territory of Minnesota in and by an act entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State and granting certain lands to railroad companies therein named," approved May 22, 1857, created and declared certain persons named in said act a body politic and corporate, by the name and style of the Minnesota and Pacific Railroad Company, and with the powers, rights, and franchises in said act specified, with the power, among other things, to survey, locate, construct, complete, alter, change the location of, reconstruct, maintain, and operate a railroad with one or more tracks or lines of rails on such route, and with such alignment and graduation as such company might think proper, from Stillwater, by way of St. Paul and St. Anthony, via Minneapolis, to the town of Breckenridge, on the Sioux Wood river, with a branch from St. Anthony via Anoka, St. Cloud, and Crow Wing, to St. Vincent, near the mouth of the Pembina river, the said railroad and branch being one of the railroads and branches specially mentioned in said act of Congress of March 3, 1857; and for the purpose of aiding in the construction of said railroad and branch all the interest and estate, present and prospective, of said Territory and of the future State which should succeed to it in or to any or all the lands granted by the Government of the United States to the Territory of Minnesota for the purpose of aiding in the construction of a railroad from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, to the point thereinbefore mentioned, agreeably to the terms of said act of Congress, together with all and singular the rights, privileges, and immunities conferred or intended to be conferred by said act of Congress, were
3 thereby granted to said company, conditioned that said land should be exclusively applied to the construction of that road

for which it was granted: And provided, That said lands should vest in said company in the manner following: Whenever twenty or more continuous miles of said road should have been located the Governor of the Territory or future State should certify the same to the Secretary of the Interior, and thereupon the title to one hundred and twenty sections of said lands should vest in said company, and when twenty continuous miles of said road should have been completed so as to admit of running regular trains on the same the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections of said lands should vest in said company until said roads should be completed, and that it should be the duty of the Governor so to certify to the Secretary of the Interior whenever any such twenty miles should be completed so as to admit of running regular trains of cars over the same, and the Governor should, in his official capacity and on behalf of the Territory or State and under the great seal thereof, execute and deliver to the said company, whenever it should, by virtue of the provisions of said territorial act, be entitled to any of said lands, a deed in fee simple of any and all of the lands to which said company should be entitled; that the location and designation of the route and line of said railroad and branch should be made by said company and reported to the Governor from time to time; that the said Minnesota and Pacific Railroad Company in and by said act was expressly authorized and empowered in its corporate capacity to borrow money from any person or persons, corporation or body politic of any kind, and for any rate of interest which might be agreed upon by and between said company and any person of whom such loan might be obtained, any law on the subject of usury of said Territory or future State or any State where such transaction might be made to the contrary notwithstanding, and to make, execute, and deliver all necessary writings, notes, bonds, mortgages, or other obligations and securities in amount and kind as might be deemed expedient by said company in consideration of any such loan or in discharge of any liabilities which it might incur in the construction, repair, equipment, or operation of said road, and in its corporate capacity to make, execute, issue, and deliver its bonds or obligations in any amount which the directors thereof might deem necessary or expedient, and to prescribe the sum or sums for which each of such bonds should be issued, the time or times and place or places when and where the principal and interest of the same should be payable, the person or persons, trustee or trustees, to whom or to which they should be payable, and whether payable to order or bearer or how otherwise negotiable, the rates of interest which said bonds should bear, and the manner and form in which the interest coupons annexed to them should be executed; and, for the purpose of securing the payment of all or any of such bonds, in its corporate capacity to make, execute, and deliver one or more mortgages or deeds of trust upon the whole or any part of its railroad or branches, constructed or authorized to be constructed, and of the estate granted by said act, and any and all other of its estate, real, personal, or mixed, in possession or expectancy, and in

and by such mortgage or deed of trust to confer upon the trustee or mortgagee full and ample powers to enter into and upon and take possession of, have, use, and employ, or to sell or dispose of, the whole or any part of said railroad and branches and all corporate and other franchies, rights, and privileges of said company, and in case of any such sale to grant and convey to the party or parties acquiring title under such sale, and their associates, successors, and assigns, all and the same rights, privileges, grants, franchises, immunities, and advantages in and by such mortgage or deed of trust enumerated and conveyed which belonged to or were enjoyed by said company as fully and absolutely in every respect as said company, its bondholders, officers, and agents, might or could have done if such sale or foreclosure had not taken place; that the directors of said company were in and by said act authorized and empowered to prescribe by resolution, to be by them adopted, all matters relating to the form and terms of any such mortgage or deed of trust and of its execution and delivery, and that said company, in and by said act, was authorized and empowered, through its agents or brokers or otherwise, at any place to sell, loan, pledge, hypothecate or otherwise dispose of any or all of the aforesaid bonds, so as aforesaid authorized to be issued, at par or at any price less than par, and for such sum or sums and on such terms as to the said company, its agents or brokers, should appear most for its interest.

And your orator further shows that the said company, after the passage of said act of said Legislative Assembly, and on the
4 25th day of May, A. D. 1857, duly organized, and after such organization, by a resolution duly passed by its board of directors, accepted said act; and a copy of such resolution, certified by the president and secretary of said company under its corporate seal, was on the same day duly filed in the office of the secretary of said Territory.

Acceptance of M. & P. R. R. Co. of act of May 22, 1857.

And your orator further shows that the said Minnesota and Pacific Railroad Company entered upon the execution of the trust by said act committed to it, and commenced the survey, location, and construction of the railroad and branch which by said act it was authorized to build *to build* and operate and located the line of its main road from Stillwater by way of St. Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, and filed a map thereof with resolutions adopting the same in the office of the Governor of the said Territory of Minnesota on the 12th day of November, A. D. 1857, and on or about the date last aforesaid said map and location of said main line terminating at Breckenridge were filed in the General Land Office, at Washington, and were thereupon approved by the Secretary of the Interior; that a map of the definite location of the said branch line via Anoka, St. Cloud, and Crow Wing to Vincent, near the mouth of the Pembina river, duly adopted by said company, was in like manner filed in the office of the Governor of said Territory and in the General Land Office, at Washington, and was duly approved by the Secre-

Location and construction of roads.

tary of the Interior on or about the date last aforesaid; and that said company did, in fact, thereafter actually construct and complete, ready for placing the superstructure thereon, about sixty miles of such railroad, and did, in fact, receive Minnesote State railroad bonds isssued and delivered to it by the Governor of the State of Minnesota to the amount of not less than six hundred thousand dollars, under and pursuant to the provisions of section ten of article nine of the constitution of said State, as amended on the 15th day of April, A. D. 1858, which said bonds were so issued and delivered to said company upon evidence produced and securities given by said company, as prescribed and required in and by said section ten of article nine as amended as aforesaid, and in and by an act of the Legislature of said State entitled "An act concerning land grant railroads," approved on the 12th day of August, A. D. 1858; but that no part of said railroad had been actually completed with the cars running thereon at the time of the passage of the act of said Legislature, approved March 6, A. D. 1860, entitled "An act in addition to an act entitled 'An act concerning land grant railroads,' passed August 25, A. D. 1858;" that after the passage of said act last mentioned, default having been made by said Minnesota and Pacific Railroad Company in the payment of interest on the first-mortgage bonds of said company, issued to and held by the said State of Minnesota and the trustees under the deed of trust or mortgage executed by said company upon all its rights, franchises, and property given to secure said bonds, having neglected to forclose the same, the Governor of said State did proceed to foreclose, and did, in fact, foreclose such deed of trust in conformity with the provisions thereof and in accordance with the statute in such case made and provided, and upon the sale of the said property, rights, and franchises covered by and embraced in said trust deed upon and under such forclosure thereof made on or about the 23d day of June, A. D. 1860, did bid off and purchase the same for and on behalf of said State of Minnesota, whereby all and singular the property, rights, and franchises of the said Minnesota and Pacific Railroad Company became and were vested in the said State; that the said Minnesota and Pacific Railroad Company, notwithstanding it afterwards duly accepted that certain act of the Legislature of Minnesota entitled "An act to facilitate the construction of the Minnesota and Pacific railroad," approved March 8, A. D. 1861, and paid the costs and expenses and made the deposit prescribed in the fourth section of said act, wholly failed to construct, put into operation, and equip for business any part or portion of its said railroad, so that at the time of the passage of the act of said Legislature of March 10, A. D. 1862, hereinafter mentioned, no part or portion whatever thereof had been constructed, put into operation, or equipped for business.

Trust deed by company.

Foreclosure of same for the State of Minnesota.

And your orator further shows that by an act of the Legislature

State act granting lands, etc., of M. & M. R. R. Co. to St. P. & P. R. R. Co.

of the State of Minnesota entitled "An act to facilitate the construction of the Minnesota and Pacific railroad and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, it was provided and declared, among other things, that all the rights, benefits, property, privileges, franchises, and interests of the Minnesota and Pacific Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, agreement, or thing by the said company theretofore done or suffered, or by virtue of any law of the State or the constitution thereof or of the former Territory of Minnesota, or by reason of any sale of the same or any part thereof by the Governor of the State on the twenty-third day of June, eighteen hundred and sixty, and bid in and purchased for the benefit of the State, were thereby granted and transferred to Dwight Woodbury, Henry T. Wells, R. R. Nelson, Edmund Rice, Edwin A. C. Hatch, James E. Thompson, Leander Gorton, Richard Chute, and William Lee, their associates and successors, for the purpose and on the terms and conditions thereafter in said act provided, free and clear of all claims or liens thereon and free from all liens and claims by or to the State of Minnesota, except as thereinafter provided; that all the rights, privileges, franchises, lands, property, and interest granted by the Territory of Minnesota to the Minnesota and Pacific Railroad Company by the act of said Territory approved May 22, A. D. 1857, were thereby continued and granted to and vested in the said Dwight Woodbury, Henry T. Wells, R. R. Nelson, Edmund Rice, Edwin A. C. Hatch, James E. Thompson, Leander Gorton, Richard Chute, and William Lee and their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Minnesota and Pacific Railroad Company had or might or could have by reason of the passage of said act, free and clear of all claims and liens of the State of Minnesota against the same, except such as were retained by the provisions of said act, and that the said persons thereinbefore named and their associates and successors should thereafter be known as the St. Paul and Pacific Railroad Company, and by that name might sue and be sued and have and exercise all the powers, rights, and privileges which theretofore pertained to the said The Minnesota and Pacific Railroad Company by the act thereinbefore referred to or by any other act or law, and that the persons thereinbefore named should be directors of the said The St. Paul and Pacific Railroad Company for one year and until others should be elected or appointed in their places; that the provisions in said act contained were upon the condition that the said The St. Paul and Pacific Railroad Company should complete and put into operation and fully equip for business that portion of said main line of said road extending from Saint Paul to Saint Anthony on or before the first day of September next thereafter, and that portion of the branch line of said road extending from Saint Anthony to Anoka by the first day of January, eighteen hundred and sixty-four, and to Saint Cloud by the first day of January, eighteen hundred and sixty-five, and those portions of the main

line of said road extending from Stillwater to Saint Paul and from Saint Anthony by way of Minneapolis westwardly to the west line of range thirty within one year from the expiration of the time last aforesaid, and to Little Falls by the first day of January, eighteen hundred and sixty-six, and thereafter to continue to construct and put into operation, fully equipped for business, the said road or branch at the rate of thirty miles annually, and all of said road or branch on or before the third day of March, eighteen hundred and sixty-seven; that in and by section six of said act it was enacted that for the purpose of aiding in the construction of the Saint Paul and Pacific railroad and the branch thereof all the interest of the State, present and prospective, in and to any and all the lands granted by Congress to the Territory of Minnesota for the purpose of aiding in the construction of a road from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of (Big) Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, agreeably to the terms of the act of Congress approved March 3, A. D. 1857, together with all and singular the rights, privileges, and immunities conferred and intended to be conferred by said act of Congress, were thereby granted to said St. Paul and Pacific Railroad Company, conditioned that said land should be applied to the construction and equipment of said road and for no other purpose whatever, and that whenever said company should actually complete that portion of the road between St. Paul and St. Anthony so that regular trains of cars should be running thereon, and not before, the Governor should certify the same to the Secretary of the Interior, and thereupon the title to one hundred and twenty sections of land should vest in said company, and that when twenty continuous miles of said road should be completed and regular trains running thereon the title to a further quantity of one hundred and twenty sections of land should vest in said company; that whenever said company should actually complete twenty continuous miles of said road from Minneapolis westwardly so as to admit of the running of regular trains of cars on the same the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections of said lands should vest in the said company, and that so on, as often as any further twenty continuous miles of said road should be completed so as to admit of the running of regular trains of cars
6 thereon, the Governor should in like manner certify the same to the Secretary of the Interior, and a further quantity of one hundred and twenty sections of said land should vest in said company, and that it should be the duty of the Governor whenever said road should be completed between St. Paul and St. Anthony, in his official capacity and on behalf of the State, to convey to said company one hundred and twenty sections of land, and that whenever any further twenty continuous miles of said road or its branches should be completed and in operation the Governor should in like manner convey a further quantity of one hundred and twenty sections of land, and so on, as often as any further twenty continuous miles of

said road or its branches should be completed, should in like manner convey to said company a further quantity of one hundred and twenty sections of land until there should be conveyed to said company all the lands to which they should be entitled according to the terms and provisions aforesaid: Provided, That upon the written authority of said company filed with the State treasurer said lands, when the company should be entitled thereto, might be conveyed by the State directly to the assigns of said company.

Joint resolution authorizing change of branch lines.

And your orator further shows that by a joint resolution of the Congress of the United States to authorize the State of Minnesota to change the line of certain branch railroads in said State and for other purposes, approved July 12, A. D. 1862, it was recited that by an act of Congress approved March 3, A. D. 1857, there was granted to the Territory of Minnesota lands to aid in the construction of a railroad from Stillwater, via St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, the northern terminus of which was fixed by the Legislature of said Territory at St. Vincent, and that it was believed that the public interests required a change of location of a part of said branch. It was therefore resolved and declared that in lieu of that part of the railroad grant to Minnesota Territory by said act of Congress of March 3, A. D. 1857, which extended northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian there should be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State might designate, having a southwestern terminus at any point on the existing line between the falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior, with a right of indemnity between the fifteen-mile limits thereof, provided such resolution should take effect from the filing in the General Land Office of the acceptance by the authorities aforesaid of such substitution; whereupon the land north of the intersection aforesaid in the grant as authorized by said act of March 3, A. D. 1857, being by said acceptance disincumbered of the railroad grant, should be dealt with as other public lands of the United States.

State act accepting provisions of joint resolution.

And your orator further shows that the Legislature of said State of Minnesota, by an act entitled "An act to authorize the St. Paul and Pacific Railroad Company to construct a branch road to Lake Superior," approved March 6, A. D. 1863, *it was* enacted that the provisions of said joint resolution of Congress approved July 12, A. D. 1862, were accepted, and the Saint Paul and Pacific Railroad Company was thereby authorized and empowered to survey, locate, construct, and maintain, in conformity with the said joint resolution of Congress, within the State of Minnesota a new branch railroad, having its southwestern terminus at or above some point opposite the town of Saint Cloud, upon the existing branch line of said "The

St. Paul and Pacific railroad," and extending from thence in a northeasterly direction, by such route as they might select, to the navigable waters of Lake Superior at or near the mouth of Pigeon river, by way of Duluth, and the said "The Saint Paul and Pacific Railroad Company" should be entitled to have, receive, and to hold, and there was thereby granted to it, all the lands, benefits, and privileges granted and conferred to and upon the State of Minnesota in and by said joint resolution of Congress, and that the said company might construct and operate the line of road therein provided for in accordance with the terms and provisions of the act of the Legislature of said State approved March 10, A. D. 1862, and that for the purpose of constructing said branch railroad the said company should have and might exercise all the rights, immunities, privileges, and franchises conferred in and by said last-named act and the act to which it was amendatory, so far as the same might be applicable: Provided, That the grants and franchises thereby conferred or extended were made upon the express condition that they should in nowise inure to the line of road then located or constructed, or to be located or constructed thereafter, under the
7 powers of the act of incorporation of the said Saint Paul and Pacific Railroad Company, and also that no act or deed of said company should be competent to embarrass or incumber the grants or franchises thereby made for any purpose connected with the line or lines of road contemplated by the then existing charter of the said railroad company.

State act relating to disposition of grant and for agreement with holders of special stock.

And your orator further shows that by an act of the Legislature of the State of Minnesota entitled "An act to amend the charter of the St. Paul and Pacific Railroad Company," approved February 6, A. D. 1864, it was, among other things, provided that whenever the St. Paul and Pacific Railroad Company should complete ten consecutive miles of the main line of its railroad from some point on the then constructed line in St. Anthony by the way of Minneapolis westerly, with regular trains running thereon, the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections should vest in said company, and so on, as often as any further twenty continuous miles should be completed, with regular trains running thereon, the Governor should in like manner certify the same to the Secretary of the Interior, and a further quantity of one hundred and twenty sections of land should vest in said company; that the St. Paul and Pacific Railroad Company should have the right to relocate the lines of its road and branches so as to run and construct the main line from St. Anthony, by way of Minneapolis, to any point between the foot of Big Stone Lake and the mouth of Sioux Wood river and the branch from St. Anthony to the Red River of the North, so as to run and construct the same from some point at or near St. Cloud to any point in the international boundary near the Red River of the North, and that it should not be required of said company to construct or maintain the said branch road by way of Crow Wing; that the said company should

complete those portions of its road from Stillwater to St. Paul and from St. Anthony by the way of Minneapolis westerly to the distance of twenty miles within two years, and the remaining portion of the main line and that part of the branch line from St. Cloud to the Red River of the North within five years, and that there should be no forfeiture of any of the lands, property, privileges, rights, or franchises of the said company for a failure to complete the same or any part thereof prior to the times above specified, and that the said company was thereby authorized and empowered to extend, survey, locate, construct, maintain, and operate its road from some point at or above St. Cloud to the westerly end of Lake Superior, and for the purpose of extending, locating, constructing, and operating the same, that said company should have and might exercise all the rights, immunities, privileges, and franchises conferred in and by its charter and which were applicable to any other portion of its road or branch road, and that the said St. Paul and Pacific Railroad Company should have power to create and issue in such manner and on such terms as it might deem expedient on [one] or more classes of preferred stock and special stock, and to make such agreement as it might deem proper with the respective holders thereof as to the dividends thereon and the securities for such dividends, and to make such agreements as it might deem proper with the holders of any such special stock for the appropriation of the net earnings of any portion of the railroad which it might construct or otherwise acquire to the payment of dividends on such special stock as might be issued in respect thereto, which appropriation as made by such agreement should be effectual to secure to the said and future holders of such stock the application of such net earnings as in the said agreement provided against any future act of the company or any of its general liabilities, and that said company might make such agreement as it might deem proper with the holders of any such special stock as to the administration of the portion of said railroad and the land grant appertaining thereto to which said stock might pertain, and for the separate organization of the holders of such special stock for the purpose of that administration and enabling them or directors chosen by them, separately or in conjunction with the other directors, to exercise in respect to the portion of the road to which such special stock might pertain all the powers of the company, subject to the provisions of such agreement when made and entered into.

Organization of holders of special stock as the First Division of the St. P. & P. R. R. Co.

And your orator further shows that on or about the 6th day of February, A. D. 1864, preferred or special stock having been theretofore duly issued on the line of the road of the said St. Paul and Pacific Railroad Company from St. Paul to Watab to the amount of thirty-five hundred shares, and on the line of its said road from St. Anthony to the point between the foot of the Big Stone Lake and the mouth of the Sioux Wood river to a very large amount, the holders thereof, under and in pursuance of the aforesaid act of the Legislature, met at St. Paul, in said State, on or about said 6th day of February, A. D. 1864, and organized

8

a corporation known as and called the First Division of the St. Paul and Pacific Railroad Company, and elected the proper officers therefor, whereby a corporation was organized known as and called the First Division of the St. Paul and Pacific Railroad Company, owning and controlling the said line of railroad from St. Paul to Watab, and also that known as the main line from St. Anthony to the point between the foot of the Big Stone Lake and the mouth of the Sioux Wood river, together with all the rights, privileges, and franchises belonging thereto or in any manner connected therewith; all of which said acts and doings were ratified and confirmed by the act of the Legislature hereinafter set forth, approved February 6, A. D. 1866; that on said 6th day of February, A. D. 1864, only that portion of said railroad extending from St. Paul by way of St. Anthony to Anoka, a distance of about thirty miles, had then been completed and equipped, with the cars running thereon; that previous to said organization of the First Division of the St. Paul and Pacific Railroad Company the said St. Paul and Pacific Railroad Company duly created and issued to one E. B. Litchfield the said preferred and special stock hereinbefore mentioned pertaining to that portion of the lines or road of said St. Paul and Pacific Railroad Company which extended from St. Paul to Watab and from St. Anthony to Breckenridge, and thereupon entered into an agreement with him, the said Litchfield, whereby said company transferred to him as the owner and holder of such preferred and special stock the said lines of road to which it so pertained, together with the franchises and lands appertaining thereto, under which agreement and in accordance with its provisions the said Litchfield, with sundry other persons, to whom he had assigned and transferred shares of the said preferred and special stock, on the same day formed and organized the said First Division of the St. Paul and Pacific Railroad Company, and that a report of such organization, with a copy of such agreement, was thereupon duly filed in the office of the secretary of state of the State of Minnesota on the 4th day of May, A. D. 1864, and to which when produced your orator begs leave to refer for greater certainty.

Act extending time for completion of road.

And your orator further shows that the Legislature of the State of Minnesota, by an act entitled "An act to aid and facilitate the completion of the St. Paul and Pacific railroad and branches," approved March 2, A. D. 1865, enacted, among other things, that the time for the grading and completion of the respective portions of the line of railroad of the St. Paul and Pacific Railroad Company as then fixed by law should be extended for the period of two years, and that all the rights, privileges, franchises, and lands conferred by the act of the Legislature of the State of Minnesota approved March 10, A. D. 1862, should be restored, released, and granted to said company free and clear of all claim and lien of the said State thereto, and that the said company should have the right and power to extend and construct said road from Winona to La Crescent: Provided, and said act was upon the express condition, that said company should complete and equip that portion of the road from Elk river to St. Cloud,

with the cars running thereon, on or before the first day of September, A. D. 1866, and from thence in a northerly direction to St. Vincent, on the international boundary line, within the time limited by law; also that the said company should build that portion of said road theretofore known as the St. Paul and Winona Branch by the way of and through the following cities and villages, to wit: Hastings, Red Wing, Lake City, Wabasha, and Minneiska: And provided, That said company should, on or about the first day of July, A. D. 1866, remove its track from the line through First street, in St. Anthony, to a line not nearer the Mississippi river than Sixth street, except that it might depart from the above requirement so far as might be necessary in the extension and construction of its road across the Mississippi river; that any and all additional grants of land made prior to the passage of such act or which might thereafter be made by the Congress of the United States to the State of Minnesota for the purpose of aiding in the construction of the lines of railroad or any portion of them authorized to be constructed by the St. Paul and Pacific Railroad Company should enure to the benefit of said company, and said lands and the present and future interest of the State in or to them were thereby granted and assigned unto the said company upon the same terms and conditions as the lands theretofore granted for the same purpose, together with the conditions contained in the said act of Congress donating the same, and that the title of all lands theretofore or thereafter granted by Congress to said State for the purposes aforesaid should vest in the company at the time and upon the terms prescribed by said act or acts of Congress making the grant, and that it should be the
9 duty of the Governor, on behalf of the State, to convey to said company the lands so granted according to the terms and provisions contained in the act or acts aforesaid, and that said act should take effect from and after its passage, and that the same and all acts relating to the St. Paul and Pacific Railroad Company and to the lines authorized to be constructed by them were thereby declared to be public acts; and your orator shows that at the time of the passage of said act a bill was pending in the Congress of the United States for an increase or enlargement of said land grant hereinbefore mentioned, and which it was then believed would pass, and which on the next day was, in fact, passed and became operative as next hereinafter set forth, and the benefit of which the said State desired and intended to accept, and did, in fact, thereafter accept.

Increase of grant, March 3, 1865.

And your orator further states and shows that by an act of Congress of the United States entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa and for other purposes," approved March 3, A. D. 1865, the quantity of lands granted to the State of Minnesota to aid in the construction of certain railroads in said State by the act of March 3, A. D. 1857, aforesaid was increased to ten sections per mile for each of said railroads and branches, subject to any and all limitations contained in said act and subsequent acts and as thereinafter provided; that in and by section two of said

act the first proviso in the first section of said act of March 3, A. D. 1857, was so amended as to provide that the land to be so located should in no case be further than twenty miles from the lines of said road and branches to aid in the construction of each of which said grant was made, and that said lands granted should in all cases be indicated by the Secretary of the Interior; that in and by section three of said act it was enacted that any and all lands theretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever were thereby reserved and excepted from the operation of said act, except so far as it might be found necessary to locate the route of said road through such reserved lands, in which case the right of way should be granted, subject to the approval of the President of the United States, provided that any lands which had been granted to the Territory or State of Minnesota for the purpose of aiding in the construction of any railroad, which lands might be located within the limits of such extension of said grant or grants should be deducted from the full quantity of lands thereby granted, and that any lands which had been so granted should be strictly applied in accordance with the terms and conditions of said act or acts, unless subsequently modified by law; that by section four of said act it was further enacted that the sections and parts of sections of land which by said acts and such grant should remain to the United States within ten miles on each side of said roads and branches should not be sold for less than double the minimum price of public lands when sold, nor should any of such lands become subject to sale at private entry until the same should have been first offered at public sale to the highest bidder at or above the minimum price aforesaid, provided that actual *bona fide* settlers under the pre-emption laws of the United States might, after the proof of settlement, improvement, and occupation, as then provided by law, purchase the same at the increased minimum price, and provided also that settlers under the provisions of the homestead law who should comply with the terms and requirements of said acts should be entitled to patents for an amount not exceeding eighty acres each, anything in the said act to the contrary notwithstanding; that in and by section five of said act it was further enacted that the lands thereby granted should be subject to the disposal of the Legislature of the State of Minnesota for the purposes aforesaid and no other, and that such railroads and branches should be and remain public highways for the use of the Government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States; that in and by section six of said act it was enacted that the lands theretofore and by said act granted to said Territory or State of Minnesota should be disposed of by said State for the purpose aforesaid only and in manner following, namely: When the Governor of said State should certify to the Secretary of the Interior that any section of ten consecutive miles of said road was completed in a good, substantial, and workmanlike manner as a first-class railroad, and the said Secretary should be satisfied that the said State had complied in good

faith with such requirement, the Secretary of the Interior should issue to said State patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile, situated opposite to and within a limit of twenty miles of the line of said section of road thus completed, extending along the whole length of said completed section of ten miles of road and no further; and when the Governor of said State should certify to the Secretary of the Interior, and the Secretary should be satisfied, that another section, ten consecutive miles in extent, connecting with the preceding section or with some other first-class railroad which might be at the time in successful operation, was completed as aforesaid the said Secretary of the Interior should issue to the said State patents for all the lands granted and situated opposite to and within the limit of twenty miles of the line of said completed section of road or roads and extending the length of said section and no further, not exceeding ten sections per mile, for all that part of said road thus completed under the provisions of said act and the act of March 3, A. D. 1857, and so from time to time until said road and branches should be completed, and that when the Governor of said State should so certify and the Secretary of the Interior should be satisfied that the whole of any one of said roads and branches was completed in a good, substantial, and workmanlike manner as a first-class railroad the said Secretary of the Interior should issue to said State patents for all lands granted for and on account of said completed road and branches in said act situated within the said limits of twenty miles from the line thereof throughout the entire length of said road and branches, provided that nothing therein contained should interfere with any existing rights acquired under any law of Congress theretofore enacted making grants of land to the State of Minnesota to aid in the construction of railroads, and provided, that no land should be granted and conveyed to said State under the provisions of said act on account of the construction of any railroad or part thereof that had been constructed under the provisions of any other act, at the date of the passage of this act, and adopted as part of the line of railroad provided for in this act; and provided further, that said lands, granted by this or prior acts, should not in any manner be disposed of except as the same should be patented under the provisions of this act; and should the State fail to complete any one of said roads or branches within eight years after the passage of this act then the said lands undisposed of as aforesaid, granted on account of said roads or branches, should revert to the United States; that in and by section nine of said act it was enacted that the provisions of said act should also be construed so as to apply and extend to that portion of the line authorized to be vacated by the joint resolution approved July twelfth, eighteen hundred and sixty-two, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," notwithstanding the vacation thereof by said State, as though said resolution had not passed, and also to the line adopted by said State in lieu of the portion of the line so vacated; that at the time of the passage of said act no part of the main

line of said road from St. Paul to Breckenridge had been built or constructed, and that only that portion of the branch line lying between St. Paul and Elk river, a distance of thirty-eight miles, had then been built and completed.

State act confirming organizat'n, etc., of First Division of St. P. & P. R. R. Co.

And your orator further shows that the Legislature of the State of Minnesota in and by an act entitled "An act to legalize and confirm the organization, acts, and proceedings of the First Division of the Saint Paul and Pacific Railroad Company, and in relation to the character and powers of said company," approved February 6, A. D. 1866, it was enacted that the holders of the preferred stock and special stock issued by the Saint Paul and Pacific Railroad Company, under the authority of an act of the Legislature of the State of Minnesota, approved on the 6th day of February, A. D. 1864, and as recited in the agreement made on the same day, under said act between the said company and E. B. Litchfield, of which agreement a copy, with a report of the organization thereunder, was filed in the office of the secretary of State on the 4th day of May, A. D. 1864, under and pursuant to an act of the said Legislature, approved March 4, A. D. 1864, should be, and were thereby, authorized to use, possess, enjoy, and exercise all the rights, benefits, privileges, property, franchises, powers, and interests of the Saint Paul and Pacific Railroad Company as a body corporate, belonging or pertaining to that portion of the lines or road of said company which extends from St. Paul to Watab, Benton county, including all the lands granted by Congress to aid in the construction of the road of said company, and which belong or pertain to such portion of said road, and all the rights, benefits, privileges, property, franchises, powers, and interests of said company as a body corporate as aforesaid, belonging or pertaining to that portion of the lines or road of said company which extends from St. Anthony to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, including all the lands granted by Congress to aid in the construction of that portion of the lines or road of said company last above mentioned, subject only to the provisions of said agreement, and subject to all the conditions and limitations respecting the construction and completion of said road or of any
11 part thereof imposed by existing laws; Provided, That nothing in said agreement or the acts of said company in pursuance thereof affecting in any manner any of the lands donated by Congress for the purpose of constructing or appertaining to that portion of the St. Paul and Pacific railroad extending from Stillwater to St. Paul should be deemed to be ratified or confirmed by said act, but that all the lands belonging and originally designed for and appropriated to the construction of said road from Stillwater to St. Paul should remain irrevocably dedicated thereto, and the acceptance by the First Division of the St. Paul and Pacific Railroad Company of said act, either by resolution or by acting under it, should be deemed a full release to the State of Minnesota of any and all rights which said First Division of the St. Paul and Pacific Railroad Company might have acquired in or to any of the lands

by virtue of such agreement; that the holders of the aforesaid preferred stock and special stock, their successors and assigns, should be and were authorized to use, possess, enjoy, and exercise all and singular the said rights, benefits, privileges, property, franchises, powers, and interests under the corporate name and style of the First Division of the St. Paul and Pacific Railroad Company, and by that name should have perpetual succession, and should have and enjoy all the powers, privileges, franchises, and immunities incident to a corporation, and might acquire by purchase or otherwise and hold, convey, sell, and lease property and estates, either real, personal, or mixed; make, have, and use a common seal, and alter and renew the same at pleasure; sue and be sued, plead and be impleaded, answer and be answered, defend and be defended against, contract and be contracted with, and generally do and perform all and every act and thing which might be necessary or requisite to the full enjoyment and exercise of all and singular the privileges, franchises, powers, rights, benefits, property, and interests by said act and said agreement transferred to or conferred upon them; and that the organization of the holders of said preferred and special stock, under the name of the First Division of the St. Paul and Pacific Railroad Company, in pursuance of the act of the Legislature and of the agreement thereinbefore referred to, and all the acts and proceedings of said organization not contrary to law nor to the terms of said agreement, were thereby sanctioned, confirmed, and legalized; that by reason of the premises and of said agreement the said First Division of the St. Paul and Pacific Railroad Company, upon its organization as aforesaid, became entitled to and vested with all and singular the corporate powers and franchises, and all the rights, privileges, property, benefits, immunities, and lands of the said St. Paul and Pacific Railroad Company belonging or pertaining to the line of railroad in said agreement specified, to wit, the said lines extending, the one from St. Paul by way of St. Anthony to Watab, and the other from said St. Anthony to Breckenridge and which were commonly known as and called the first branch line and the other the main line of the said St. Paul and Pacific Railroad Company, and did thereupon proceed to construct, complete, and equip, and did fully construct, complete, and equip, the said lines from St. Paul to Watab and from St. Anthony to Breckenridge, except about four miles on the northerly end of said line from St. Paul to Watab, the main line from St. Anthony to Breckenridge having been fully completed to the approval and acceptance of the State of Minnesota and the United States on or about the 25th day of October, A. D. 1871, and that portion from St. Paul to Watab, except four miles on the north end thereof as aforesaid, having been fully completed to the approval and satisfaction of the State of Minnesota and the United States on or about the 1st day of December, A. D. 1867; that after the organization of the First Division of the St. Paul and Pacific Railroad Company it owned, operated, and controlled the said road and controlled and managed the land grants appertaining thereto under and by virtue of the act of Congress of March 3, A. D. 1857, and the said act of

Congress of March 3, A. D. 1865, and the aforesaid legislation of the State of Minnesota in relation thereto, and that, before any of the foreclosures hereinafter mentioned, the greater part of all the lands granted by the United States as aforesaid to aid in the construction of the lines of road so owned by the said First Division of the St. Paul and Pacific Railroad Company had, under the agreement and legislation hereinbefore mentioned, passed to and become vested in fee simple in the said First Division of the St. Paul and Pacific Railroad Company, and said company had become legally entitled to all of said lands, subject, however, as to the portion of said lines and lands covered by the several deeds of trust hereinafter mentioned, executed before the 6th day of February, A. D. 1864, to the lien of such deeds, respectively, all of which, with the bonds thereby secured, the said First Division of the St. Paul and Pacific Railroad Company assumed and undertook to pay off and discharge.

And your orator further shows that, prior to the organization of the said First Division of the St. Paul and Pacific Railroad Company, an agreement had been made between the St. Paul and Pacific Railroad Company and the corporators of the Stillwater and St. Paul Railroad Company in and by which the said St. Paul and Pacific Railroad Company agreed to relinquish to the said Stillwater and St. Paul Railroad Company that part of the main line of its road between Stillwater and St. Paul, together with the rights, franchises, lands, and privileges pertaining to said portion of said line, which said agreement was filed for record on the 23d day of February, A. D. 1867, in the office of the secretary of state of the State of Minnesota, and to which, when produced, your orator begs leave to refer for greater certainty; and that afterward, by an act of the Legislature of the State of Minnesota entitled "An act confirming an agreement between the St. Paul and Pacific Railroad Company and the corporators of the Stillwater and St. Paul Railroad Company, and authorizing said Stillwater and St. Paul Railroad Company to construct that portion of the main line of said St. Paul and Pacific railroad between Stillwater and St. Paul, and granting lands in aid of the construction of said part of said main line," approved March 4, A. D. 1867, the agreement last aforesaid was assented to and confirmed by and on behalf of said State, and the said St. Paul and Pacific Railroad Company was thereby released from its obligation to construct that portion of its main line so relinquished and from all penalties and forfeitures by reason of the non-construction thereof within the time theretofore provided by law, and that said Stillwater and St. Paul Railroad Company, a corporation then existing under the laws of the State of Minnesota, should have power to enter upon said line of road between Stillwater and St. Paul, and, if deemed necessary, to relocate the same or change the line for engineering purposes, and to construct, maintain, and perpetually to operate a railroad with one or more tracks, with all necessary side tracks and fixtures, so as to construct the same from some convenient point in the city of Stillwater

12

Agreement relinquishing part of main line between St. Paul and Stillwater.

State act confirming same.

to the city of St. Paul, and to have all and singular the property, privileges, rights of way, franchises, and rights theretofore held by said St. Paul and Pacific Railroad Company or by said State pertaining to said portion of said main line.

Act of Congress authorizing change of branch line.

And your orator further shows that by an act of Congress entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," approved March 3, A. D. 1871, it was provided that the St. Paul and Pacific Railroad Company might so alter its branch lines that, instead of constructing a road from Crow Wing to St. Vincent, and from St. Cloud to the waters of Lake Superior, it might locate and construct, in lieu thereof, a line from Crow Wing to Brainerd, to intersect with the Northern Pacific Railraad, and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands to be taken in the same manner along said altered lines as was provided for the then existing lines by existing laws: Provided, however, That such change should in no manner enlarge said grant, and that said act should only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that proper releases should be made to the United States by said company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released should be considered as immediately restored to market without further legislation; that the said act of Congress last above mentioned was in accord with the legislation of the State of Minnesota, and that the said St. Paul and Pacific Railroad Company duly accepted the same, and before the 19th day of December, A. D. 1871, did make proper releases of all lands along said abandoned lines, as in said act provided, and did proceed to relocate its said branch line of road from East St. Cloud to St. Vincent as aforesaid, by way of and through the towns of Melrose, Sauk Centre, Alexandria, Fergus Falls, Glyndon, and Crookston to St. Vincent aforesaid, which relocation was made and adopted in the field on and before the 7th day of November, A. D. 1871, and a map thereof, duly certified by the officers of said company, was filed with the Governor of the State of Minnesota on the day and year last aforesaid, and that said map of the definite location of said branch line of road, duly attested and certified, was filed in the Department of the Secretary of the Interior of the United States on the 19th day of December, A. D. 1871, and that said map of definite location was, on the 20th day of December, 1871, duly approved by the Secretary of the Interior on behalf of the United States, and was afterwards ratified and confirmed
13 by an act of the Congress of the United States entitled "An act for the extension of the time to the St. Paul and Pacific Railroad Company for the completion of its roads," in and by which it was provided, among other things, that the time for the completion of the railroad from St. Cloud to St. Vincent, in said State, as

then located, with the approval of the Secretary of the Interior, be extended for the period of nine months from the time limited by the acts of Congress relating to the same, and said location was also ratified and approved by the legislation of the State of Minnesota hereinafter set forth.

And your orator further shows that by an act of the Legislature of the State of Minnesota, entitled "An act to provide for the completion of the lines of railroad commonly known as the St. Paul and Pacific Extension lines," approved March 1, A. D. 1877, it was among other things enacted that the time for the completion of the uncompleted portions of the line of railroad commonly known as the St. Vincent Branch of the St. Paul and Pacific Extension lines, be thereby extended as follows: From Melrose to Sauk Centre, until July 1, A. D. 1878; from Sauk Centre to Alexandria, until January 1, A. D. 1879; from Alexandria to Fergus Falls, and from Crookston to St. Vincent, until January 1, A. D. 1880, and from Fergus Falls to Glyndon until January 1, A. D. 1881; provided, however, that such extensions of time were made subject to all the provisions of this and the succeeding sections of this act, in which it was provided, among other things, that in case the St. Paul and Pacific Railroad Company, its successors or assigns, should fail to complete any of the said portions of the said line of railroad within the times therefor therein limited, in that case the portions of said line of railroad then remaining uncompleted, together with the land grant, rights, franchises, immunities, and property appertaining thereto, should at once be and become absolutely forfeited to the State of Minnesota, without any act or ceremony whatsoever; and that it should be the duty of the Governor forthwith, upon such failure, to enter upon and take possession of, for and in the name of the State, all and singular the portions of the road so remaining uncompleted, and all and singular the land grant, rights, franchises, immunities, and property appertaining thereto; and upon such forfeiture all and singular the lines of road, land grant, rights, franchises, immunities, and property so forfeited should be held by the State, without merger or extinguishment, to be used and regranted for the construction of said line of road; and that none of the lands outside the ten-mile limits, commonly designated indemnity lands, should accrue to any company on account of the construction of any portion of the said line of road extending from St. Cloud to St. Vincent until there should first have been reserved therefrom a sufficient quantity to make up ten full sections for each mile of said line lying between such portion thereof and Melrose; that one-half of all the land up to two hundred thousand acres in quantity, which should be first acquired on account of the construction of the then uncompleted line of railroad from Watab to Brainerd, or any part thereof, and one-half of all the lands up to four hundred thousand acres which should be first acquired on account of the construction of the then uncompleted line of railroad from Crookston to St. Vincent or any part thereof, by virtue of any grant of lands which had been or should

State act extending time for completion of roads and providing for relinquishment of lands, etc.

thereafter be made to aid in the construction of said lines of railroad should be reserved and retained by the State, to be used by it for the payment of the claims incurred for work and material furnished in the construction of said lines of railroad; statements of which claims were filed in the State auditor's office in pursuance of an act of the Legislature approved February 21, A. D. 1874; that if any of the lands so reserved should remain undisposed of by the State, after the payment of the claims of the said claimants, they should be conveyed by the Governor to the company which should have completed the portions of railroad to which the lands comprising such residue should appertain; that the land so reserved should be applied to the purposes for which such reservation was made in the manner following: The Governor, attorney general, and railroad commissioner, or any two of them, should, as soon as might conveniently be after the passage of said act, examine into the claims, statements of which had been so filed as aforesaid, and adjust and ascertain the amount remaining owing and unpaid to the parties, respectively, who had filed such claims for work or materials or for both furnished in the construction of said extension lines of railroad, and that they should file in the State auditor's office a compiled statement of the amounts so ascertained by them to be owing and unpaid upon said claims to the said parties, respectively; that in ascertaining the amounts so owing to said claimants that said officers should be empowered to examine witnesses under oath, and that the concurrence of any two of said officers should be sufficient for the determination of the amount remaining owing on any
14 such claims; that if it should be made to appear to said officers that the work or materials embraced in any such claim were furnished by the claimant under a contract with any other of said claimants such fact should be set forth in such statement; that whenever, after the amounts remaining unpaid upon said claims should have been ascertained as therein provided, and any of the lands so reserved should have been patented or otherwise conveyed by the United States to said State, such lands, or so much thereof as might be necessary for such purpose, should be sold by the Governor at public auction, and the net proceeds of all such sales be forthwith distributed ratably by the Governor among said claimants in proportion to the amounts found to remain due and owing upon their respective claims as in said act provided, such notice of the time and place of said sale being first given as the Governor should consider best calculated to inform the public thereof; that such sales should take place from to time, as portions of the lands so reserved should be patented or otherwise conveyed by the United States to the State, until the net proceeds of such sales should have become sufficient to pay such claim in full, or until all such lands should have been sold; that at any such sale the owner or holder of any such claim might become a purchaser, and should be entitled to be credited upon the sum for which such purchase should be by him made with an amount which should bear the same proportion to the amount ascertained to be owing upon his claim as in said act provided as the total proceeds of the sale at which such purchase

should be made should bear to the total amount ascertained to be owing upon all said claims in the aggregate, as thereinbefore provided; that upon the price of any purchase of said lands at such sale being paid or settled, as therein provided, the Governor should execute to such purchaser, his heirs or assigns, a patent for the land so purchased, which should vest in the patentee, his heirs or assigns, the title in fee simple to the lands therein described; that in case it should be ascertained by the Governor, attorney general, and railroad commissioner, as therein provided, that the work or materials for which any of said claims had been filed were furnished under a contract with any other of said claimants, in that case the Governor should so distribute the proceeds of such sales as to prevent payment being more than once made for the same work or materials; that if at any time any of said claimants should receive any payments upon his or their claims from any source other than the proceeds of such lands, such payment should be deducted from the amount of such claim, and such claimant should be entitled to share in the proceeds of said lands only on account of the residue of his claim remaining after such reduction should have been made; that the lands reserved as therein provided should be selected by the Governor, and should be a fair average of the lands acquired from the United States on account of the construction of said uncompleted portions of road; that such selections should be made from time to time, as the lands were acquired from the United States, until three hundred thousand acres in all should have been so selected and set apart; that the St. Paul and Pacific Railroad Company, or any company or corporation taking the benefits of said act should not in any manner, directly or indirectly, acquire or become seized of any right, title, interest, claim, or demand in or to any piece or parcel of land lying and being within the granted or indemnity limits of said branch lines of road to which legal and full title had not been perfected in said St. Paul and Pacific Railroad Company, or their successors or assigns, upon which any person or persons had in good faith settled and made or acquired valuable improvements thereon on or before the passage of said act, or upon any of said lands upon which had been filed any valid pre-emption or homestead filing or entry, not to exceed one hundred and sixty acres to any one actual settler, and the Governor of said State should deed and relinquish to the United States all pieces or parcels of said lands so settled upon by any and all actual settlers as aforesaid, to the end that all such actual settlers might acquire title to the lands upon which they actually resided from the United States as homesteads or otherwise, and upon the acceptance of the provisions of said act by said company it should be deemed by the Governor of said State a relinquishment by said company of all such lands so occupied by all such actual settlers, and in deeding to the United States such lands the Governor should receive as *prima facie* evidence of actual settlement on said lands the testimony and evidence or copies thereof heretofore or which might be thereafter taken in cases before the local United States land offices and decided in favor of such settlers, and that chapter 117 of the Special Laws of said State for 1876, being an

act relative to the construction of a railroad between Breckenridge and Glyndon, and approved March 6, A. D. 1876, and chapter 105 of the Special Laws of said State for 1874, and chapter 49 of the Special Laws of said State for 1875 were thereby repealed.

And your orator further shows that it is informed and believes, and so charges the fact to be, that many of the provisions of the last-named act of the Legislature of Minnesota are *ultra vires* and void, as being in conflict with the provisions of said act of Congress, and in particular the tenth section thereof, and that the said St. Paul and Pacific Railroad Company refused to accept the provisions of said acts and refused to relinquish any lands within the twenty-mile limits of said grant settled upon, occupied, pre-empted, or upon or against which any filing had been made for any homestead, but, on the contrary, protested against the same.

Refusal of company to relinquish lands.

And your orator further shows that in and by an act of the Legislature of the State of Minnesota entitled "An act to amend chapter two hundred and one of the Special Laws of one thousand eight hundred and seventy-seven, entitled 'An act to provide for the completion of the lines of railroad commonly known as the St. Paul and Pacific Extension lines,'" approved March 9, A. D. 1878, section six of said last-named act was so amended that the time for the completion of the uncompleted portions of the line of railroad extending from St. Cloud to St. Vincent, commonly known as the St. Vincent Branch of the St. Paul and Pacific Extension lines, was extended as follows, to wit: From Melrose to Sauk Center until August 1, A. D. 1878; from Sauk Center to Alexandria until December 1, A. D. 1878; from Crookston to St. Vincent until January 1, A. D. 1880; from Alexandria to Fergus Falls until January 1, A. D. 1880; from Fergus Falls to Glyndon until January 1, A. D. 1881; but that such extensions were made subject to all the provisions of that and the succeeding sections of said act; that in case the St. Paul and Pacific Railroad Company, its successors or assigns, should fail to complete any of the said portions of said line of railroad within the times therefor limited in said act, in that case the portions of said line of railroad then remaining uncompleted, together with the land grant, rights, franchises, immunities, and property appertaining thereto, should at once be and become absolutely forfeited to the State of Minnesota without any act or ceremony whatsoever, and that it should be the duty of the Governor forthwith upon such failure to enter upon and take possession for and in the name of the State all and singular the portions of road so remaining uncompleted and all and singular the land grant, rights, franchises, immunities, and property appertaining thereto, and upon such forfeiture all and singular the lines of the road, land grant, rights, franchises, immunities, and property so forfeited should be held by the State, without merger or extinguishment, to be used and regranted for the construction of said line of road; that neither the St. Paul and Pacific Railroad Company nor any other company accepting or acting under the provisions of said act should

State act extending time to complete roads.

be entitled to receive or demand any of the lands granted by the United States to the State of Minnesota to aid in the construction of said line of railroad until that portion of said line of railroad extending from Melrose to Alexandria should be fully completed, with cars running thereon; but that when such portion should be completed, then, and not before, the Governor of the State might convey or certify to the company building such portion not to exceed two hundred thousand acres of said lands, and a further quantity of two hundred thousand acres in case the portion of said line of railroad extending from Crookston to St. Vincent should be also completed, from the lands accruing to said road north of Crookston and not within the indemnity limits: Provided, That nothing should be construed under said act which would waive the right of the State to receive the full grant of ten sections per mile of completed road from the United States; and that when that portion of said line of railroad extending from Alexandria by way of Evansville to Fergus Falls should be fully completed, with the cars running thereon, then, and not before, the Governor might convey or certify to said company all the rest, residue, and remainder of the lands granted by the United States to the Territory of Minnesota to aid in the construction of said line of railroad, and that the Governor of the State should be thereby expressly prohibited from conveying or certifying to such railroad company any of said lands otherwise, at other times, in other quantities, or upon other conditions than in said act provided, as above set forth; and that that portion of section nine of said last-named act commencing with the words "and one-half," in the fourth line of said section, and ending with the words "any part thereof," in the eighth line of said section, were struck out, and that the word and figure "three (3)," in the last two lines of said section, were changed and the word and figure "one (1)" inserted in place thereof, so that the lands to be selected and set apart, as specified in said section, should be one hundred thousand acres instead of three hundred thousand acres.

16 And your orator further shows that the said St. Paul and Pacific Railroad Company, on or about the second day of June, A. D. 1862, did execute and deliver to Edmund Rice, Horace Thompson and Samuel J. Tilden, as trustees, a certain deed of trust or mortgage, bearing date on that day, to secure the payment of bonds duly issued by it to raise means with which to build its road, to the amount of one million two hundred thousand dollars, with interest, of and upon its said line of road from St. Paul by way of St. Anthony to Watab, including all its equipments and appurtenances, tolls, incomes, rents, issues, and profits, and all the railways, ways and rights of way, depot grounds, and other lands; all tracks, bridges, viaducts, culverts, fences, and other structures; all depots, stationhouses, and other appurtenances then held or thereafter to be acquired, and all franchises connected with or relating to said railway, and all corporate franchises, including the franchise to be a corporation, together with all and singular the lands granted as aforesaid by the United States to the Territory of Minnesota by said act

Trust deed or mortgage.

of Congress of March 3, A. D. 1857, for the purpose of aiding in the construction of said line of railway from St. Paul by way of St. Anthony to Watab; which said mortgage or deed of trust was, soon after its execution, duly recorded in accordance with the laws of the State of Minnesota.

Trust deed or mortgage.

And your orator further shows that on or about the first day of March, A. D. 1864, the said corporation called the First Division of the St. Paul and Pacific Railroad Company duly executed a certain deed of trust, bearing date on that day, to Edmund Rice, Horace Thompson, and Samuel J. Tilden, conveying to them all the right, title, and interest which said last-named company then had or which it should or might thereafter acquire or become entitled to in or to all the sections and parts of sections of land granted as aforesaid to the Territory of Minnesota by the said act of Congress approved March 3, A. D. 1857, and subsequently granted as aforesaid by said Territory and State of Minnesota for the purpose of aiding in the construction of said railroad from St. Anthony to a point in the direction of Big Stone Lake, a distance of one hundred and fifty miles, and in and to the whole of said railroad from St. Anthony to a point in the direction of Big Stone Lake, one hundred and fifty miles from St. Anthony, with all and singular the equipments, rolling stock, machinery, tools, implements, and appurtenances, and all corporate and other franchises pertaining or belonging to the same, and the tolls, income, rents, and profits thereof, to secure the payment of corporate bonds of said company duly issued by it, to the amount of three million dollars, with the interest thereon; which said deed of trust was soon thereafter duly recorded in accordance with the laws of said State.

Trust deed or mortgage.

And your orator further shows that the said First Division of the St. Paul and Pacific Railroad Company afterward and on the first day of October, A. D. 1865, executed a certain other deed of trust, bearing that date, to George L. Becker, Horace Thompson, and George T. M. Davis, conveying all the right, title, and interest which said company then had or which it should or might thereafter acquire or become entitled to in and to all those sections or parts of sections of land granted as aforesaid to the Territory and State of Minnesota by the said acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, respectively, and by said Territory and State granted as aforesaid for the purpose of aiding in the construction of said railroad from St. Paul by way of St. Anthony, Anoka, and St. Cloud to Watab, and also the whole of said railroad from St. Paul via St. Anthony to Watab, with all and singular the equipments, rolling stock, machinery, tools, implements, and appurtenances, and all corporate and other franchises pertaining or belonging to the same, and the tolls, income, rents, issues, and profits thereof, to secure the payment of its corporate bonds duly issued, amounting in the aggregate to two million eight hundred thousand dollars, with the interest thereon; which said deed of trust was soon thereafter duly recorded in accordance with the laws of said State.

And your orator further shows that the said First Division of the

Trust deed or mortgage.

St. Paul and Pacific Railroad Company afterward and on the first day of July, A. D. 1868, duly executed to George L. Becker, Horace Thompson, and Samuel J. Tilden a certain trust deed, bearing date on the day last mentioned, conveying to them all the right, title, and interest which the said company then had or might thereafter acquire or become entitled to in and to all those sections and parts of sections of land granted as aforesaid to the Territory and State of Minnesota by the said acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, respectfully, and by the said Territory and State granted as aforesaid for the purpose of aiding in the construction of the said railroad from St. Anthony to Breckenridge, a distance of
17 two hundred and ten miles (excepting therefrom the lands which said company had acquired or should or might thereafter acquire or become entitled to under the said act of Congress of March 3, A. D. 1857, for the construction of that part of said railroad which extends from St. Anthony to a point in the direction of Big Stone Lake, a distance of one hundred and fifty miles, included in the above-mentioned deed of trust to Edmund Rice, Horace Thompson, and Samuel J. Tilden, dated March 1, A. D. 1864), and also the whole of said railroad extending from St. Anthony to Breckenridge, with all and singular the equipments, rolling stock, machinery, tools, implements, and appurtenances, and all corporate and other franchises pertaining or belonging to the same, and the tolls, income, rents, and profits thereof, to secure the payment of the corporate bonds of said company duly issued, to the amount of six million dollars, with the interest thereon; which said deed of trust was soon thereafter duly recorded in accordance with the laws of said State.

And your orator further shows that after the alteration and relocation of the branch lines of the road of the said St. Paul and Pacific

Agreement for loan and trust deed.

Railroad Company and the approval thereof by the Secretary of the Interior and by the United States, and on or about the first day of April, A. D. 1871, the said St. Paul and Pacific Railroad Company entered into a certain contract with the said First Division of the St. Paul and Pacific Railroad Company for the construction and equipment of said lines of railroad as so altered and relocated as aforesaid, to wit, from St. Cloud to St. Vincent and from Watab to Brainerd, in and by which said contract it was agreed, among other things, that the last-mentioned company should loan and advance to said St. Paul and Pacific Railroad Company or for its use and benefit in the construction and equipment of its said lines of railroad the sum of fifteen million dollars in the bonds of said First Division of the St. Paul and Pacific Railroad Company, bearing date April 1, A. D. 1871, and payable on the first day of January, A. D. 1901, with interest, payable semi-annually, at the rate of seven per centum per annum, and that the said St. Paul and Pacific Railroad Company should assume and secure the payment of said bonds, principal and interest, by the execution and delivery to trustees of a deed of trust or mortgage of and upon all and singular the said lines of railroad

so to be constructed, with their respective equipments, appurtenances, and franchises, and also of and upon all right, title, and interest then held or thereafter to be acquired by said St. Paul and Pacific Railroad Company in and to the lands granted by Congress as aforesaid to aid in the construction of such lines of railroad; that the said First Division of the St. Paul and Pacific Railroad Company, in pursuance of said contract, did execute and issue its said bonds, with interest coupons annexed, to said amount of fifteen million dollars, all of which were duly negotiated and sold for value; and the said St. Paul and Pacific Railroad Company did execute and deliver its trust deed or mortgage, bearing date on the first day of April, A. D. 1871, to Horace Thompson, George L. Becker, and William G. Moorhead, trustees, conveying to them, to secure the payment of the principal and interest of said bonds as the same should become due and payable and upon the terms in said trust deed provided, all and singular the said lines of railroad from St. Cloud to St. Vincent, a distance of about two hundred and ten miles, and from Watab by way of Crow Wing to Brainerd, a distance of about fifty-five miles, together with the equipments and appurtenances of the said roads respectively, and the rights, privileges, and franchises thereunto respectively belonging or in anywise appertaining or which should or might thereafter thereunto belong or in anywise appertain, and also all the right, title, and interest which said St. Paul and Pacific Railroad Company then had or which it or its successors or assigns should or might at any time thereafter acquire by reason of the constuction of said railroads or of either or of any part of either thereof or otherwise in, to, or concerning the lands which are embraced or intended to be embraced in the said grants of the United States made by the acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, respectively, and which had been or should or might be granted or conveyed to the said St. Paul and Pacific Railroad Company, its successors or assigns, to aid in the construction of the said lines of railroad or of either or any part thereof; which said deed of trust was soon thereafter duly recorded according to the laws of said State of Minnesota.

Execution of trust deed.

And your orator further shows that afterwards and before the third day of August, A. D. 1874, the said First Division of the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated October 1st, A. D. 1865, executed to Horace Thompson and others as trustees, as hereinbefore stated, and a suit for the foreclosure thereof was commenced for such default and breach of conditions of such trust deed by said Horace Thompson and George T. M. Davis, trustees, against the St. Paul and Pacific Railroad Company, the First Division of the St. Paul and Pacific Railroad Company, and others, in the court of common pleas in and for the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court of said Ramsey county by and pursuant to chapter 209 of the Special Laws of Minnesota for the

Foreclosure of trust deed.

18

year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff in said suit in the place and stead of George T. M. Davis, and that afterwards such proceedings were had in said suit in said district court for Ramsey county that on the 15th day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made in and by said court and rendered in said cause declaring the amount due on said trust deed of October 1st, A. D. 1865, to be the sum of one million six hundred and seventy-one thousand three hundred and eight dollars and fifty-seven cents, and directing a sale of the property embraced in said trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree said property described in said decree, with its appurtenances, was duly sold on the seventh day of May, A. D. 1879, to John S. Barnes, for the benefit of himself, George Stephen, Donald A. Smith, Norman W. Kittson, and James J. Hill, for the price and sum of two hundred thousand dollars, which said sale was duly reported to said court and was in all respects confirmed by said court on the 13th day of May, A. D. 1879, and said property, with its appurtenances, was duly conveyed to them accordingly; that thereupon afterwards and on the 23d day of May, A. D. 1879, the said John S. Barnes, George Stephen, Donald A. Smith, Norman W. Kittson, and James J. Hill, pursuant to the provisions of chapter forty-nine of the Laws of Minnesota for the year 1879 and chapter thirty of the General Laws of Minnesota for the year 1876 and the provisions of the charter of the Minnesota and Pacific Railroad Company, duly organized themselves into and became a corporation under and by the name of the Saint Paul, Minneapolis and Manitoba Railway Company, they having duly performed and complied with all the provisions of said acts on their part, and that afterwards the said John S. Barnes, George Stephen, Donald A. Smith, Norman W. Kittson, and James J. Hill duly conveyed all the property embraced in and covered by the said sale to said The St. Paul, Minneapolis and Manitoba Railway Company, and on the 21st day of June, A. D. 1879, the certificate and deed of conveyance of said property to the purchasers thereof was duly filed in the office of the secretary of state of the State of Minnesota, and that ever since that time your orator, the said Saint Paul, Minneapolis and Manitoba Railway Company, has been and still is a railway company existing and acting as such under and by virtue of said organization and the charter of the Minnesota and Pacific Railway Company and the legislation hereinbefore set forth, and that it thereby became vested with all the rights of the St. Paul and Pacific Railroad Company to the lands, rights, franchises, and other property mentioned in said trust deed so sold and conveyed as aforesaid, with the appurtenances.

Sale and conveyance to corporators of complainant.

Organization of complainant.

And your orator further shows that afterwards and before the seventh day of May, A. D. 1874, the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed

Foreclosure of trust deed.

hereinbefore mentioned, dated June 2, A. D. 1862, executed to the said Edmund Rice, Horace Thompson, and Samuel J. Tilden, as trustees, as hereinbefore stated, and a suit for the foreclosure thereof was commenced for such default and for breach of the conditions of said trust deed by the said Edmund Rice, Horace Thompson, and Samuel J. Tilden as such trustees against the St. Paul and Pacific Railroad Company and the First Division of the St. Paul and Pacific Railroad Company and others in the court of common pleas in and for the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court for said Ramsey county by and pursuant to chapter 209 of the Laws of said State for the year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff in said suit in the place and stead of Samuel J. Tilden; and that afterwards such proceedings were had in said suit in said district court for Ramsey county that, on the thirty-first day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made and rendered in and by said court in said cause declaring the amount due on said trust deed of June 2, A. D. 1862, to be the sum of one million four hundred and eighty-one thousand five hundred and twelve dollars, and directing a sale of
19 the property embraced in said trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree, on the second day of June, A. D. 1879, said property described in said decree, with its appurtenances, was duly sold and conveyed to your orator for the price and sum of eight hundred and fifty thousand dollars, which said sale was duly reported to and was in all respects confirmed by the said court on the twelfth day of June, A. D. 1879, and that afterwards and on the twenty-first day of June, A. D. 1879, the certificate of sale and deed of conveyance of said last-named property to your orator were duly filed by your orator in the office of the secretary of state of the State of Minnesota, whereby your orator became vested with all the rights of the St. Paul and Pacific Railroad Company in and to the rights, franchises, and other property mentioned in said trust deed and sold as aforesaid, with the appurtenances.

Sale and conveyance to complainant.

And your orator further shows that afterwards and before the seventh day of May, A. D. 1874, the said First Division of the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated on the first day of March, A. D. 1864, and executed to Edmund Rice, Horace Thompson, and Samuel J. Tilden as trustees, and that a suit for the foreclosure of the last above-mentioned trust deed was commenced for such default and for breach of the conditions of said trust deed by the said Edmund Rice, Horace Thompson, and Samuel J. Tilden as such trustees against the First Division of the St. Paul and Pacific Railroad Company and others in the court of common pleas in and for the county of Ramsey and State of Minnesota, which suit

Foreclosure of trust deed.

was afterwards transferred from said court to the district court for said Ramsey county by and pursuant to chapter 209 of the Laws of said State for the year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff to said suit in the place and stead of Samuel J. Tilden, and that afterwards such proceedings were had in said suit, in said district court for Ramsey county, that on the twenty-ninth day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made and rendered in and by said court in said cause declaring the amount due on said trust deed last mentioned, dated March 1, A. D. 1864, to be the sum of two million sixteen thousand nine hundred and seventy-five dollars, and directing the sale of the property embraced in said last-mentioned trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree of the fifth day of June, A. D. 1879, said property described in and by said decree, with its appurtenances, was duly sold and conveyed to your orator for the price and sum of two hundred and fifty thousand dollars; which said sale was reported to and was in all respects confirmed by said court on the seventeenth day of June, A. D. 1879, and that afterwards, on the twenty-first day of June, A. D. 1879, the certificate of sale and deed of conveyance of said last-named property to your orator was duly filed by your orator in the office of the secretary of state of the State of Minnesota, whereby your orator became vested with all the rights of the said First Division of the St. Paul and Pacific Railroad Company in and to the rights, franchises, and other property mentioned in said trust deed and so sold as aforesaid, with the appurtenances.

Sale and conveyance to complainant.

And your orator further shows, that afterwards and before the third day of August, A. D. 1874, said First Division of the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated on the first day of July, A. D. 1868, executed to George L. Becker, Horace Thompson, and Samuel J. Tilden as trustees, and that a suit for the foreclosure of the last above-mentioned trust deed was commenced by said Horace Thompson and Samuel J. Tilden, as such trustees, the said George L. Becker having been removed from his said trusteeship and no one having been appointed in his place, against the First Division of the St. Paul and Pacific Railroad Company and others in the court of common pleas of the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court for said Ramsey county by and pursuant to chapter 209 of the Laws of said State for the year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff in said suit in the place and stead of Samuel J. Tilden, and that afterwards such proceedings were had in said suit in said district court for Ramsey county that on the twenty-fourth day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made and rendered in

20 and by said court in said cause declaring the amount due on said trust deed last mentioned, dated on the first day of July, A. D. 1868, to be the sum of six million nine hundred forty-five thousand three hundred eighty-five dollars and ninety-eight cents, and directing the sale of the property embraced in said last-mentioned trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree, on the second day of June, A. D. 1879, said property described in said decree, with its appurtenances, was duly sold and conveyed in two parcels to your orator, one of the same for the sum of nine hundred thousand dollars, and the other for the sum of four hundred and fifty thousand dollars, which said sales were reported to and were in all respects confirmed by said court on the twelfth day of June, A. D. 1879, and that afterwards and on the twenty-first day of June, A. D. 1879, the certificates of sale and deeds of conveyance of said last-mentioned property to your orator were duly filed by your orator in the office of the secretary of state of the State of Minnesota, whereby your orator became vested with all the rights of the said First Division of the St. Paul and Pacific Railroad Company in and to the rights, franchises, and other property mentioned in said trust deed and so sold as aforesaid, with the appurtenances.

Sale and conveyance to complainant.

And your orator further shows that Horace Thompson, George L. Becker, and William G. Moorhead, trustees under the said trust deed hereinbefore mentioned, executed by the said St. Paul and Pacific Railroad Company on the first day of April, A. D. 1871, to secure the payment of the bonds therein mentioned, were afterwards duly removed from their trusteeship under the same, and Jacob S. Wetmore, Thomas W. Pearshall, and Thomas Denny were duly appointed their successors and accepted said trust; that thereafter, or on or about the — day of December, A. D. 1875, the said St. Paul and Pacific Railroad Company having made default in the performance of said trust deed and in the payment of the sums of money secured thereunder, a suit was duly instituted on the equity side of the circuit court of the United States for the district of Minnesota by said last-named trustees against the said St. Paul and Pacific Railroad Company, the First Division of the St. Paul and Pacific Railroad Company, Horace Thompson, William G. Moorhead, George L. Becker, and Charles A. F. Morris for the foreclosure of said deed of trust, and for other purposes; that afterwards and at the December term of said court, A. D. 1878, to wit, on the 11th day of April, A. D. 1879, such further proceedings were had in said cause in said court, the said court then and there having jurisdiction of the said cause and of the parties thereto, that a final decree was rendered in said cause, in and by which it was adjudged and decreed, among other things, that said mortgage or deed of trust was sufficient in form to convey and mortgage all and singular the lines of road, land grants, lands, property, and franchises in said mortgage described as follows, viz: All and singular the line of railroad of the said c rporation, The

Foreclosure of trust deed.

Decree.

St. Paul and Pacific Railroad Company, extending from a point at or near the town of Saint Cloud, in the county of Stearns, to the town of Saint Vincent, in the county of Kittson and State of Minnesota; and also all and singular the line of railroad which said defendant corporation, The St. Paul and Pacific Railroad Company, was authorized to construct from Watab, in the county of Benton, by way of Crow Wing, to the town of Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific railroad at said town, as contemplated by the act of Congress approved March 3, 1871, together with the equipments and appurtenances of the said railroads, respectively, and the rights, privileges, and corporate or other franchises thereunto respectively belonging or in anywise appertaining, or which should or might at any time thereafter thereunto belong or in anywise appertain; and also all the right, title, and interest which the said defendant, The St. Paul and Pacific Railroad Company, then had or that it or its successors or assigns might at any time afterwards acquire by reason of the construction of said railroads or of either or of any part of either thereof, or otherwise, in, to, or concerning the lands situate, lying, and being in the State of Minnesota, which were embraced or intended to be embraced in the grants aforesaid, or either of them, made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of March 3, A. D. 1857, March 3, A. D. 1865, and March 3, A. D. 1871, respectively, which were granted by said State to said railroad company, or should or might be granted or conveyed to it, its successors or assigns, to aid in the construction of the said line of railroad or of either or of any part of either thereof, including in the premises thereby conveyed the road-beds of the said railroads, respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine shops, and other shops, and all other structures, buildings,
21 and materials whatsoever, placed or to be placed on the said railroads, respectively, or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatsoever, and all machinery, tools and implements, fuel and materials, for constructing, operating, repairing, or replacing the said railroads or either or any part of either thereof, or any of the equipments or appurtenances of said railroads or either or any part of either thereof, held by the said St. Paul and Pacific Railroad Company or thereafter to be acquired by the same, its successors or assigns; together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging or in anywise appertaining, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said St. Paul and Pacific Railroad Company in, to, or concerning the same, and each and every part and parcel thereof, with the appurtenances, and that the same, upon the execution and delivery of said deed of trust, became subject to the lien thereof; that

there was then due and unpaid upon the said bonded indebtedness the principal sum and amount of fifteen million dollars and the interest thereon from July 1, A. D. 1874, which said principal and interest were a lien upon said mortgage property and franchises, as thereinbefore specially stated; that the defendant, the said First Division of the St. Paul and Pacific Railroad Company, or the defendant, The St. Paul and Pacific Railroad Company, pay the same within five days, and in default thereof that all and singular the said mortgaged property, rights, immunities, and franchises be sold by one of the masters of said court, as one parcel and as an entire property, to the highest and best bidder therefor, but for a price not less than one million five hundred thousand dollars; that the right and equity of redemption of the said defendants in said suit and of all persons claiming by, through, or under them or either of them should be absolutely foreclosed and barred; that, the said sum of money so adjudged due remaining wholly unpaid, the said premises were advertised for sale on the 14th day of June, A. D. 1879, and for want of payment of said sum were on that day duly sold to your orator for the price and sum of one million six hundred thousand dollars, it being the highest and best bidder therefor; whereupon said property so sold was conveyed to your orator; that afterwards and at the June term of said court, A. D. 1879, to wit, on the 21st day of June, A. D. 1879, the master's report of said sale and the certificate or conveyance thereof executed by said master were in all respects confirmed.

Sale and conveyance to complainant.

And your orator further shows that in and by each of said several decrees of the said district court of Ramsey county it was adjudged and decreed that the sale of the mortgaged property therein authorized and directed should be absolute and without redemption and free from any right of redemption under the laws of Minnesota or otherwise.

And your orator further shows that by an act of the Legislature of the State of Minnesota approved March 7, A. D. 1881, and being chapter 412 of the Special Laws of said State for that year, it was enacted and declared, among other things, that the said purchases made by your orator, The St. Paul, Minneapolis and Manitoba Railway Company, and mentioned in said act, as evidenced by the several instruments of conveyance and transfer duly entered and remaining of record in the office of the secretary of state of the said State of Minnesota, to wit, the several purchases so made of the main and branch lines (so called) formerly owned by the First Division of the St. Paul and Pacific Railroad Company and of the extension line (so called) extending from East St. Cloud to St. Vincent and the international boundary line formerly owned by the St. Paul and Pacific Railroad Company, with the equipments, land grants, land, property, benefits, privileges, immunities, and corporate and other franchises and powers pertaining to said main, branch, and extension lines respectively, as well as the said several instruments of conveyance and transfer and the organization of said St. Paul, Minneapolis and Manitoba Railway Company, were fully ratified and con-

State act confirming complainant's purchases, organization, etc.

firmed, and the said St. Paul, Minneapolis and Manitoba Railway Company in the use and enjoyment and in the management, operation, and conduct of the business of said main and branch lines and the land grants and lands appertaining thereto should have, possess, enjoy, and exercise, and was thereby declared to be vested with the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the First Division of the St. Paul and Pacific Railroad Company with respect to said main and branch lines, and in the use and enjoyment
22 and in the management, operation, and conduct of the business of said extension line and the lands and land grants appertaining thereto, and was thereby declared to be vested with the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the St. Paul and Pacific Railroad Company with respect to said extension line; and in and by said act it was further enacted that any of said instruments of conveyance and transfer might be proved by the record thereof aforesaid, or by a duly certified copy of such record, as well as by the production of the instrument itself, and that said act should be legal evidence of the corporate character and powers of said St. Paul, Minneapolis and Manitoba Railway Company in all courts and places whatsoever, and that said act should take effect and be in force from and after its passage.

Date of completion and length of road.

And your orator further shows that its said road from St. Paul to Sauk Rapids, so acquired as aforesaid, was wholly built and equipped on and before the first day of January, A. D. 1868, in part by the said St. Paul and Pacific Railroad Company and in part by the said First Division of the St. Paul and Pacific Railroad Company, and that that portion of its road between St. Cloud and St. Vincent was fully built, equipped, and put in operation in part by the said St. Paul and Pacific Railroad Company and in part by and under the direction of this honorable court, by and through a receiver duly appointed in a suit pending therein, wherein John S. Kennedy and others were complainants and The St. Paul and Pacific Railroad Company and others were defendants, and was finally completed by your orator, all of which was done, as by law in that behalf required, between the twentieth day of December, A. D. 1871, and the fourth day of December, A. D. 1879, to the acceptance and satisfaction of the State of Minnesota and of the United States, and the completion of said road and branches has been duly and regularly certified by the Governor of Minnesota to the Secretary of the Interior of the United States as to successive sections of the same completed as aforesaid and as to the whole of said main line and branches; that the number of miles of road so completed and certified is as follows, to wit: From St. Anthony to Breckenridge, two hundred and seven miles; from St. Paul to Sauk Rapids, seventy-seven miles, and from St. Cloud to St. Vincent, three hundred and fifteen miles, for all of which your orator is entitled to have and receive lands so granted as aforesaid at the rate of ten sections per mile for each mile of completed road, except as to thirty-eight miles thereof between St. Paul and

Elk River, and for that distance a quantity of land equal to every alternate odd-numbered section for six miles on each side of said piece of road, and that over six hundred thousand acres of land so granted as aforesaid remain unpatented to your orator, but to which it is now well entitled in the law.

Complainant entitled to grants of March 3, 1857, and March 3, 1865.

And your orator further shows that by reason of the premises it has become and now is well entitled to all and singular the lands so granted to the Territory and State of Minnesota by the acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, to aid in the construction of its said road and branches so acquired and built as aforesaid, to wit, the main line, from St. Anthony to Breckenridge, and the branch lines from St. Anthony to Sauk Rapids and from St. Cloud to St. Vincent, and that it has received conveyances of the legal title to a considerable portion of the lands so granted and earned by the construction of said lines of railroad, and has in fact earned and is well entitled to a conveyance in fee of all the lands so granted as aforesaid, and is the sole beneficial owner of all those so granted for which patents have not been issued to it or to those under whom it claims title as aforesaid; that a very considerable quantity of lands so granted for the purpose aforesaid, both in the place limits of said grant as determined by the line of the location of the road and branches as well as in the indemnity limits of said grant, have not yet been patented or certified to the said State of Minnesota, and have not been patented to your orator, as they in equity and good conscience ought to have been; that the officers of the General Land Office, in the Department of the Interior of the United States, under erroneous views of the law and of their duty, have from time to time been permitting the said lands to be entered under various acts of Congress, when in fact and in law the said lands are in nowise subject to entry, sale, and disposal under the same, pretending and claiming at times that said land grant expired December 3, A. D. 1873, and that although the said lands have been fully earned by the building and completion of said railroad and branches under and in pursuance of legislation, both congressional and State, as aforesaid, that said lands are subject to pre-emption and to homestead entry as aforesaid, whereas
23 the legal title to all said lands in the place limits along said railroad and branches and not conveyed by said State is and has been well vested in the State of Minnesota, ever since the definite location of the said road and branches, for the sole use and benefit of your orator and those under whom it claims, and your orator is now entitled to the legal title thereto, said road and branches having long since been fully completed, as required by law, and having been fully equipped and in full operation for more than five years last past; that after the definite location of the main line of its road from Stillwater, by way of St. Paul and St. Anthony, to a point at the foot of Big Stone Lake and the mouth of Sioux Wood river, terminating at Breckenridge, in the State of Minnesota, was made and filed in the office of the Governor of the Territory of Minnesota, on the 12th day of November, 1857, and which, on or

about the date last aforesaid, with a map thereof, was filed in the Department of the Interior, at Washington, and the approval by the Secretary of the Interior of said location and map, as hereinbefore set forth, the title to all odd-numbered sections of land within six miles of said line, on either side thereof, became and was vested in fee simple in the Territory of Minnesota and in the State of Minnesota upon its admission into the Union for the use and benefit of said Saint Paul and Pacific Railroad Co., through and under which your orator now claims to have and own the same by reason of the premises aforesaid, and said odd-numbered sections ceased to be subject to sale or disposition by the United States in any way or manner or to or for any other use or purpose whatever.

24 And your orator further shows that afterwards the Territory of Dakota was duly created and organized, the Indian title to the lands hereinafter described was extinguished, and land offices were established therein for the sale and disposition of the public lands of the United States at Fargo and other places in said Territory, and the lands hereinafter described are situated in the said Territory, near the eastern boundary thereof, as the same was and is now established by law, and very many of the odd-numbered sections and parts of sections of land so granted in and of the construction of said main line of road and of said branch road from St. Cloud to St. Vincent (the Indian title to which has long since been extinguished) are now, since the creation and organization of said Territory, situated within the limits and boundaries of said Territory as so established; that the defendant, Ransom Phelps, sets up a claim of title to and claims to be the legal owner of the following-described premises, to wit: The east half of the southeast quarter of section thirteen (13), township one hundred and thirty-two (132), of range forty-eight (48), in the county of Richland and Territory of Dakota, which said premises are opposite to and within less than six miles of the line of the definite location of said main line of railroad from Stillwater, by way of Saint Paul and Saint Anthony, to Breckenridge, and about two miles south of the northern terminus thereof, as so located and approved, and which constitutes a part of the lands to which your orator is well entitled in fee simple by reason of the location and construction of said main line of road, as hereinbefore set forth;

25 that said premises are of the value of six thousand dollars; that the claim of title of the said defendant thereto is founded, as your orator is informed and believes, upon a certain warranty deed thereof, executed and delivered to him by the Northern Pacific Railroad Company, dated the 15th day of January, A. D. 1875, and recorded in the office of register of deeds of said Richland county on the 26th day of June, A. D. 1875, in Book A, page 203, and that he pretends and claims that said premises are a part of the lands granted to the said Northern Pacific Railroad Company by act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," approved July 2nd, A. D. 1864, as amended by the joint resolution of Congress entitled "A

resolution authorizing the Northern Pacific Railroad Company to issue its bonds for the construction of its road and to secure the same by mortgage, and for other purposes," approved May 31, A. D. 1870; to which said act of Congress and joint resolution thereof and the several provisions thereof your orator begs leave to refer for greater certainty.

And your orator further shows unto your honors that the line of the road of said Northern Pacific Railroad Company through Minnesota and opposite to and beyond the premises above described was not definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land Office of the United States until the 21st day of November, A. D. 1871, and until more than a month after your orator's said main line of railroad had been so completed to its northern terminus, at Breckenridge aforesaid, and that
26 the title or claim of title of the said defendant is set up and insisted on by him under and by virtue of the joint resolution of Congress last aforesaid, and said lands are situated within the geographical limits prescribed and added to said grant to the Northern Pacific Railroad Company for indemnity purposes by said joint resolution; and your orator avers that long before the making of said grant to the Northern Pacific Railroad Company by said act of July 2, 1864, the title to said land had become legally vested in the State of Minnesota to aid in the construction of said main line of railroad; that the tract of land hereinbefore described at the time of the definite location of said main line and approval thereof had not been reserved by the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or any other purposes whatever, and the United States has not, by judicial proceedings, legislative act, or otherwise, made any entry or its equivalent by reason or on account of any breach of condition subsequent contained in said grant for said main line, and has not received or taken back the title to said lands from said State of Minnesota in any way or manner whatsoever; that said alleged conveyance of said premises from the Northern Pacific Railroad Company to said defendant so recorded as aforesaid constitutes a cloud upon the interest and title of your orator in and to the same so acquired as aforesaid, and that it is well entitled to have the legal title thereto vested in it for its sole use and benefit; that said pretended claim of title of said Ransom Phelps in and to said land is inequitable and illegal,
27 the legal title thereto having ever since the definite location of said main line of road, on the 12 day of November, A. D. 1857, been vested in the Territory and subsequent State of Minnesota in trust as aforesaid; that said land is situated within six miles of the definite location of said road, and along which said road has been long since fully completed and actually operated for a period of more than twelve years last past.

To the end therefore that said defendant, Ransom Phelps, may, if he can, show why your orator should not have the relief hereby prayed, and that he may make true, full, and perfect answer to all and singular the matters and things hereinbefore stated and charged as fully and

particularly as if the same were hereinafter repeated and he thereunto distinctly interrogated, according to the best of his knowledge, information, and belief, but not on oath, the necessity of the answer of the defendant being put in under the oath of the said defendant being hereby expressly waived; that the said complainant may be declared and adjudged the full, equitable, and beneficial owner of the said tract of land and entitled to have and receive the legal title thereto in fee, and that the said deed of conveyance so executed and delivered by the Northern Pacific Railroad Company therefor and all title or claim of title of the said defendant to said lands under or by virtue thereof may be adjudged and declared invalid and of no effect whatever as against the complainant and its said equitable title to said lands, and that the defendant, Ransom Phelps, and all persons claiming under, by, or through him may be perpetually enjoined and restrained from setting up, asserting, or attempting to put in force or use any right, title, or interest in or to said
28 land or any part thereof under or by virtue of said deed so executed and recorded as aforesaid, hereinbefore set forth, or otherwise, and that your orator may have such other and further relief in the premises as the nature of the case may require and as to your honors may seem meet and in accordance with equity—

May it please your honors to grant unto your orator the writ of subpœna of the United States of America, to be directed to the defendant, Ransom Phelps, commanding him, by a certain day and under a certain penalty, to be and appear before your honors in this honorable court, then and there to answer all and singular the premises, and to stand to and abide and perform such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray, etc.

R. B. GALUSHA,
Complainant's Solicitor.

S. U. PINNEY, *Of Counsel.*

Endorsed: Filed Apr. 29th, 1884. Oscar B. Hillis, clerk.

29 And on the same day, to wit, the 29th day of April, A. D. 1884, the following order for chancery subpœna was entered in the Common Rule Register, on page 189, said order being in the words and figures following:

Order for Chancery Subpœna.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
RANSOM PHELPS.

The plaintiff having filed a bill of complaint in this cause on application of R. B. Galusha, solicitor, ordered that a writ of subpœna issue as herein prayed for.

And on the same day, to wit, the 29th day of April, A. D. 1884, pursuant to the above order, the following chancery subpœna was issued out of this court, said chancery subpœna being in the words and figures following, viz:

Chancery Subpœna.

30 UNITED STATES OF AMERICA, *District of Minnesota:*

The President of the United States of America to Ransom Phelps, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of June next, at the city of Saint Paul, then and there to answer the bill of complaint of the Saint Paul, Minneapolis and Manitoba Railway Company, citizen of the State of Minnesota, filed against you on the 29th day of April, A. D. 1884; hence fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 29th day of April, 1884.

Seal U. S. Circuit Court, Dist of Minnesota.

Issued at my office, in the city of Saint Paul, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy.*

MEMORANDUM.—The above-named defendant to enter his appearance in this suit in the clerk's office aforesaid on or before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso.*

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy.*

R. B. GALUSHA,
Complainant's Solicitor.

[Endorsed:] No. —. United States circuit court, district of Minnesota. —— —— *vs.* —— ——. Chancery subpœna. Returnable to June rules, 1884. Returned into the clerk's office and filed this 12th day of June, A. D. 1884. —— ——, clerk, by —— ——, deputy. R. B. Galusha, complainant's solicitor.

31 And afterwards, to wit, on the 12th day of June, A. D. 1884, an *alias* subpœna was issued out of this court; which said *alias* subpœna and marshal's return of service attached thereto is in the words and figures following, viz:

Alias Subpœna & Marshal's Return.

32*a* UNITED STATES OF AMERICA, *District of Minnesota,* } *ss.*:

I hereby certify that I have served the annexed chancery subpœ-

on the herein-named defendant, Ransom Phelps, personally, by handing to and leaving with him a true copy thereof at Breckenridge, in said district, on the 18 day of June, 1884.

H. R. DENNY,
U. S. Marshal,
By GUS. H. BEAULIEN,
Spec. Deputy.

Marshal's fees, $15.10.

32 *Alias.*

UNITED STATES OF AMERICA, *District of Minnesota:*

The President of the United States of America to Ransom Phelps, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of July next, at the city of Saint Paul, then and there to answer the bill of complaint of the St. Paul, Minneapolis & Manitoba Railway Company, citizen of the State of Minnesota, filed against you on the 12th day of June, A. D. 1884; hence fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 12 day of [SEAL.] June, 1884. Issued at my office, in the city of Saint Paul, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk,*
By —— ——, *Deputy.*

MEMORANDUM.—The above-named defendant to enter his appearance in this suit in the clerk's office aforesaid on or before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso.*

OSCAR B. HILLIS, *Clerk,*
By —— ——, *Deputy.*

R. B. GALUSHA,
Complainant's Solicitor.

[Endorsed:] No. —. United States circuit court, district of Minnesota. —— *vs.* ——. Chancery subpœna. Returnable to July rules, 1884. Returned into the clerk's office and filed this 20 day of June, A. D. 1884. Oscar B. Hillis, clerk, by —— ——, deputy. R. B. Galusha, complainant's solicitor.

33 And afterwards, to wit, on the 5th day of July, A. D. 1884, the following order for appearance of defendant was entered in the Common Rule Register, page 201, said order being in the words and figures following, viz:

Order for Appearance.

And now comes the defendant, by W. P. Clough, solicitor, on whose motion it is ordered that the appearance of said defendant be, and the same is hereby, entered.

And afterwards, to wit, on the 18th day of August, A. D. 1884, the answer to the complainant's complaint in this cause was filed of record, said answer being in the words and figures following, viz:

Answer.

34 In the Circuit Court of the United States for the District of Minnesota.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO., Plaintiff,
vs.
RANSOM PHELPS, Defendant.

Answer of the defendant to the bill of complaint of the plaintiff.

This defendant, now and at all times hereafter, saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary to make answer unto—this defendant, answering, saith—

That the parcel of land particularly described in the plaintiff's bill is situated more than six miles and more than ten miles distant from the line of the plaintiff's said railroad, commonly designated its main line, and has never formed any part of the lands referred to by either of the acts of Congress or of the Legislature of the Territory or State of Minnesota mentioned in said bill; and this defendant denies that the complainant ever had any right to or any interest in the said parcel of land, and denies that the complainant is entitled to the relief prayed for in its said bill or to any portion thereof, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint con-
35 tained material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

W. P. CLOUGH,
Solicitor for Defendant.

W. P. CLOUGH,
Counsel for Defendant.

Endorsed: "Filed August 18th, 1884. Oscar B. Hillis, clerk."

36 And afterwards, to wit, on the 1st day of Sept., 1884, a replication to the answer was filed, said replication being in the words and figures following, viz:

Replication.

The United States Circuit Court for the District of Minnesota. In Equity.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
RANSOM PHELPS.

The replication of the St. Paul, Minneapolis and Manitoba Railway Company, complainant, to the answer of Ransom Phelps, defendant.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

R. B. GALUSHA,
Solicitor for Pl'ff.

36½ Circuit Court of the United States for the District of Minnesota. In Equity.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
RANSOM PHELPS.

It is hereby agreed and admitted for the purposes of the final hearing of this suit and in order to save the expense of proof that the facts hereinafter stated are true as follows, to wit:

First. The allegations of the complainant's bill contained in folios one (1) to one hundred and six (106), one hundred and forty-two (142) to one hundred and forty-five (145), one hundred and forty-eight (148) to one hundred and fifty-one (151), one hundred and seventy-one (171) to one hundred and eighty (180), and one hundred and ninety-three (193) to one hundred and ninety-nine (199), inclusive of the folios bearing said numbers, are true as therein

stated, save in so far as the same may differ from the maps, acts of Congress, treaties, and the acts of Legislature hereinafter mentioned or consist of inferences therefrom.

Second. Either party may put in evidence upon the hearing copies of those certain maps, together with the certificates thereof, filed in the office of the Governor of the late Territory and present State of Minnesota, one on November 12, A. D. 1857, by the Minnesota and Pacific Railroad Company; one on April 24th, A. D. 1869, by the First Division of the St. Paul and Pacific Railroad Company, such copies to be authenticated by the certificates of the land commissioner of the State of Minnesota; also any treaties, acts of Congress, or acts of the Legislature of the late Territory or present State of Minnesota which it or he may be advised to be material to the points in controversy in this suit. The court shall be at liberty to take notice of the United States public land surveys for the purpose of ascertaining the location of the lands in controversy relatively to the complainant's line of railroad and for all other purposes material to the controversy between the parties.

Third. The lands in controversy, which are of the value of six thousand dollars, lie within the distance of fifty miles laterally southward from the Northern Pacific railroad. That part of the said railroad opposite the said lands was completed, with the cars running thereon, in the manner prescribed by that certain act of Congress, approved July 2nd, A. D. 1864, entitled "An act making a grant of lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's Sound, on the Pacific coast, by the northern route," prior to July 1st, A. D. 1872, and duly accepted by the President of the United States, in conformity with the provisions of the said act of Congress, prior to January 1st,
36½ A. D. 1874, the said Northern Pacific railroad being the same railroad contemplated by the said act of Congress. Prior to the definite location and construction by the Northern Pacific Railroad Company of its line of railroad as aforesaid certain sections and parts of sections of land lying within the limits of the grant to the said company made by the said act of Congress had been granted, sold, reserved, occupied by homestead settlers, or preempted or otherwise disposed of by the United States, and after the construction as aforesaid of that portion of its said railroad opposite the lands in controversy, and prior to January 15th, 1875, the said Northern Pacific Railroad Company, under the direction of the Secretary of the Interior, selected the said lands in controversy in lieu of an equal area of said lands lost to it in the manner aforesaid, unless such selection was rendered invalid and ineffectual by reason of a prior right to the same lands having become vested in the complainant or in its predecessor in interest by virtue of the said acts of Congress or of the said territorial or State Legislature and the proceedings had under them as hereinbefore stipulated, or by facts shown at the hearing by documentary evidence. After the lands in controversy had been selected as aforesaid, and on January 18th, 1875, the Northern Pacific Railroad Company made its deed conveying the same, as far as in law it was able to do so, to the defendant.

Fourth. In the adjustment to [of] the plaintiff's land grant the Secretary of the Interior has always declined to certify or convey to the Territory or State of Minnesota any lands lying westward of the Bois des Sioux river, for the alleged reason that the limits of such grant do not by law extend westward of the eastern bank of that stream, and no lands lying westward of that stream have ever been certified or conveyed to the said Territory or State on account of the said railroad.

Fifth. The time when and manner of definite location of the route of the Northern Pacific Railroad Company may be shown by any proper record or maps thereof duly certified, or by such proofs as may be on file or produced in the case of The Northern Pacific Railroad Company against The St. Paul and Pacific Railroad Company.

Sixth. Whether such selection was valid or effectual for any purpose is to be determined as matter of law by the court upon the facts admitted and proved.

Seventh. Either party may produce such documentary evidence as he or it may choose at the hearing, and as to the situation or location of the lands in question in respect to the located line of the complainant's main line of road to Breckenridge, either party may produce such proofs before any commissioner of the court as he or it may desire on reasonable notice.

R. B. GALUSHA,
Solicitor for Complainant.
W. P. CLOUGH,
Solicitor for Defendant.

Dated June —, 1885.

Endorsed: "Filed Sept. 17th, 1885. Oscar B. Hillis, clerk."

37 "F." C. H. B. J. R. E.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *May*, 1884.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed papers are copies of telegrams, letters, and papers appearing upon the records and in the files of this office, and each is a true copy and literal exemplification of the telegram, letter, or paper to which it relates, viz:

1. Telegram from this office to register and receiver at Minneapolis, Minnesota, dated March 7th, 1857.

2. Telegram from this office to register and receiver at Stillwater, Minnesota, dated March 7th, 1857.

3. Telegram from this office to register and receiver at Sauk Rapids, Minnesota, dated March 7, 1857.

4. Circular letter from this office to registers and receivers at district land offices, dated June 22, 1857.

5. Letter from this office to Governor of Minnesota, dated July 21, 1857.

6. Letter from this office to register and receiver at Minneapolis, Minnesota, dated August 24, 1857.

7. Letter from this office to register at Sauk Rapids, Minnesota, dated August 24th, 1857.

8. Letter from N. P. Causin to this office, dated January 16, 1858.

9. Letter from this office to register and receiver at Sauk Rapids, Minnesota, dated March 25th, 1858.

10. Letter from this office to Secretary of the Interior, dated April 3, 1858.

38 11. Letter from Secretary of the Interior to this office, dated May 8, 1858.

12. Letter from Secretary of the Interior to this office, dated August 29, 1859.

13. Letter from Secretary of the Interior to this office, dated December 1, 1862.

14. Letter from this office to George L. Becker, dated May 25th, 1864.

15. Letter from N. P. Causin to this office, dated April 16, 1868.

16. Letter from this office to N. P. Causin, dated May 4, 1868.

17. Letter from this office to register and receiver at St. Cloud, Minnesota, dated August 14th, 1868.

18. Letter from this office to register and receiver at Greenleaf, Minnesota, dated August 14th, 1868.

19. Letter from this office to register and receiver at St. Cloud, Minnesota, dated March 17, 1869.

20. Letter from this office to register and receiver at Alexandria, Minnesota, dated April 12, 1869.

21. Letter from this office to register and receiver at Alexandria, Minnesota, dated May 25th, 1869.

22. Letter from Herman Trott to this office, dated September 7, 1871.

23. Letter from this office to Herman Trott, dated Nov. 24, 1871.

24. Letter from this office to Enoch Totten, dated April 24, 1872.

39 25. Letter from this office to register and receiver at Vermillion, D. T., dated May 2, 1872.

26. Letter from this office to register and receiver at Sioux Falls, D. T., dated June 19, 1873.

27. Letter from this office to register and receiver at Sioux Falls, Dakota, dated Sept. 2, 1874.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

N. C. McFARLAND,

[SEAL.] *Commissioner of General Land Office.*

40 (1.)

GENERAL LAND OFFICE, *March 7th*, 1857.

Register and receiver, Minneapolis, Minn. Ter.:

Suspend from sale or location until further orders all the town-

ships in your district east of range thirty and townships one hundred and eighteen, one hundred and nineteen, and one hundred and twenty, of ranges thirty and thirty-one. Acknowledge the receipt of this by mail.

THOS. A. HENDRICKS,
Commissioner.

41 (2.)

GENERAL LAND OFFICE, *March 7th*, 1857.

Register and receiver, Stillwater, Minn. Terr.:

Suspend from sale or location until further orders all the townships in your district south of township thirty-one; also township thirty-one, of range twenty; thirty-one and thirty-two, of range twenty-one; thirty-one to thirty-three, of range twenty-two; thirty-one to thirty-four, of range twenty-three & twenty-four; thirty-one to thirty-five, of range twenty-five; thirty-two to thirty-five, of range twenty-six, and thirty-two to thirty-six, of range twenty-seven. Acknowledge the receipt of this by mail.

THOS. A. HENDRICKS,
Commissioner.

42 (3.)

GENERAL LAND OFFICE, *March 7th*, 1857.

Register and receiver, Sauk Rapids, Minn. Terr.:

Suspend from sale or location until further orders all the townships in your district west of range twenty-eight and east of the Mississippi river; also townships thirty-two to thirty-eight, inclusive, of range twenty-eight. Acknowledge the receipt of this by mail.

THOS. A. HENDRICKS,
Commissioner.

43 (4.)

(*Circular.*)

GENERAL LAND OFFICE, *June 22nd*, 1857.

Reg. and recv. at gen'l ——, Minnesota:

I am directed by the Secretary of the Interior to instruct you not to allow any pre-emption claim predicated upon a settlement made within four months after the receipt of this letter on any of the lands withdrawn from market, in view of the provisions of the law of third of March last making a grant of land to the Territory of Minnesota for railroad purposes. Acknowledge the receipt of this letter.

Respectfully, etc.,

THOS. A. HENDRICKS,
Commissioner.

[On margin in red ink:] Sent to the following land offices, viz: Stillwater, Sauk Rapids, Chatfield, Minneapolis, Faribault, Henderson.

44 (5.)

GENERAL LAND OFFICE, *July* 21*st*, 1887.

His Excellency Samuel Medary, Governor of Minnesota:

SIR: I have the honor to inform you that in pursuance of the act entitled "An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3rd, 1857, U. S. Laws for 1857, p. 195, telegraphic dispatches were sent from this office on the 7th of March last to the several land offices in the Territory of Minnesota withdrawing from sale and location all lands which would fall within the probable limits of selection, according to the best information in our possession, which instructions were repeated by mail on the 9th day of April last.

It will be perceived that the grants are made direct to the Territory. It will therefore be necessary in the adjustment of them that we should have the co-operation of selecting agents duly appointed by the authorities of the Territory. The first thing to be done is to transmit to this and the proper local officers separate connected maps of the several roads certified as the lines of route as "definitely fixed" by the respective companies under their seals, the dates of location to be verified by the affidavits of the engineers, and certified likewise by the Governor under the seal of the Territory. As these
45 maps will form the basis of the adjustment, they should show the connection, on a convenient scale of, say, one inch to the mile, with the public surveys, and it will be sufficient if only one section on each side of the road be shown. On the receipt of the maps of final location the route of each road will be laid down on the township plats, as also the six and fifteen mile limits, and the lists prepared, without delay, of the vacant and sold lands within six miles; and such lands as are found not to fall within fifteen miles, the prescribed limits of selections, can at once be restored to market. As the title of the Territory will vest in the alternate sections within six miles of the roads from the date when the lines of route are "definitely fixed," and also that of the right of way under the general law of fourth of August, 1852, from the date of the filing the maps of the same in this office, the importance of an early compliance with these requirements, as well as accuracy in showing the tracts cut by the routes, will be seen and appreciated.

Resp't. your ob't servant,

THOMAS A. HENDRICKS,
Commissioner.

46 (6.)

GENERAL LAND OFFICE, *August 24th*, 1857.

Register and receiver, Minneapolis, M. T.

GENTLEMEN: In the instructions to you of the twenty-second June last pre-emptions were prohibited upon settlements made within four months after your receipt of them on any of the lands withdrawn from market, in view of the act of third of March last, making a grant of land to the Territory of Minnesota for railroad purposes. Those instructions were received by you on the 30th of June, 1857; consequently the interdict extends to any settlement made before the 30th of October next.

We are informed that plats for the following townships falling within the "fifteen-mile limits" of a direct line between the termini have been received at the local office, viz., townships 119 and 120 of ranges 31 to 38, inclusive. In reference to those townships, and also such others as may hereafter be received by you within the "fifteen-mile limits" above mentioned, you will consider the interdict as applicable against the reception of pre-emptions on settlements made prior to the 30th October next, such interdict extending, of course, to town site as well as rural pre-emptions.

Resp't. y'r ob't serv't,

THOMAS A. HENDRICKS,
Commissioner.

47 (7.)

GENERAL LAND OFFICE, *August 24th*, 1857.

Register and receiver, Sauk Rapids, M. T.

GENTLEMEN: In the instructions to you of the 22nd of June last pre-emptions were prohibited upon settlements made within four months after your receipt of them on any of the lands withdrawn from market, in view of the act of 3rd of March last, making a grant of land to the Territory of Minnesota for railroad purposes. Those instructions were received by you on the 16th of July, 1857; consequently the interdict extends to any settlement made before the 16th of November next.

We are informed that plats for the following townships falling within the "fifteen-mile limits" of a direct line between the termini have been received at the local land office, viz., townships 121, 122, and 123 of ranges 31 to 38, inclusive. In reference to those townships, and also such others as may hereafter be received by you within the "fifteen-mile limits" above mentioned, you will consider the interdict as applicable against the reception of pre-emptions on settlements made prior to the 16th of November next, such interdict extending, of course, to town site as well as rural pre-emptions.

Resp. y'r ob't serv't,

THOMAS A. HENDRICKS,
Commissioner.

48 (8.)

WASHINGTON, 16*th Jan'y*, 1858.

Hon. Thos. A. Hendricks, Commissioner, etc.

SIR: For and in behalf of the Minnesota and Pacific Railroad Company I select, under instructions from that company, the odd-numbered sections within the nine-mile limits to make up deficiency or loss sustained by valid sales made of or pre-emption rights which may have attached to "any sections or parts thereof" designated by odd numbers within the six-mile limits previously to the definitely fixing of the line or route of the said road.

Very resp't. your ob't serv't,

NATH. POPE CAUSIN,
Agent for Territory and Railroad Company.

49 (9.)

GENERAL LAND OFFICE, *March 25th*, 1858.

Reg. and rec., Sauk Rapids gen'l ——, Minnesota:

Official notice, under date of 16th January last, has been given to this office by N. P. Causin, Esq., agent of Minnesota Territory, of the selection of the odd-numbered sections of land outside of the six and within the fifteen mile limits of the Minnesota and Pacific railroad route and branch for the benefit of said road and branch, in pursuance of the provisions of the act of Congress of 3rd March, 1857. You are therefore hereby instructed not to permit pre-emption declarations to be filed on or entries made of any lands in said sections by virtue of settlements made subsequent to the 16th of January aforesaid.

The even sections, alternate to the sections above indicated, are still subject to pre-emption at the usual minimum.

Very respectfully, etc.,

THOS. A. HENDRICKS,
Commissioner.

[Written on the margin in red ink:] Similar letter sent to Minneapolis & Stillwater.

50 (10.)

GENERAL LAND OFFICE, *April 3rd*, 1858.

Hon. Jacob Thompson, Secretary of the Interior.

SIR: On the 5th of December last N. P. Causin, Esq., agent, etc., filed in this office maps of the lines of route of the "Minnesota and Pacific railroad" from Stillwater, via St. Paul and St. Anthony, to the Sioux Wood river and for that part of its branch line from St. Anthony, via St. Cloud, to Crow Wing, filed in view of the grant to Minnesota by act 3 March, 1857.

No objections being presented to the line of route of the branch road as indicated on the map, it was accepted as the basis of adjustment.

To the map of the main line from Stillwater to the Sioux Wood river exceptions were taken by this office, for the reasons, first, that about one-half of the route, as indicated thereon, extended beyond the lines of the public surveys; and, next, that the part shown thereon in connection with the public surveys made too great a deflection from a direct line between the termini fixed in the law, and Mr. Causin was advised that before action in the matter by this office it would be necessary for the company to produce such authentic data as would satisfactorily account for the deflection, and, in regard to that part of the route extending beyond the public surveys, that no action could be taken until after the public surveys had extended coextensive with the route and supplemental maps filed showing its connection therewith.

51 The enclosed statement and map are now submitted by Mr. Caustin with his communication of the 27th ult.

These papers show that extended personal examinations and instrumental surveys were made of the country between the termini, and also show that, owing to the broken surface of the country, deep lakes, and marshes, the difficulties to a more direct route are very great, if not almost insurmountable.

The facts submitted would, therefore, in our own judgment, authorize the acceptance of the map filed, so far as the same shows the route of the road in connection with the public surveys, as the basis of adjustment; but the matter is respectfully submitted for your consideration and instructions in the premises.

Very respectfully your ob't serv't,

THOS. A. HENDRICKS,
Commissioner.

52 (11.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May 8th*, 1858.

SIR: Your report of the 3rd ult. submitted for my consideration certain affidavits which you deem sufficient to remove objections which had been entertained to the location of the line of the railroad from Stillwater, via St. Paul and St. Anthony, to the Sioux Wood river, as indicated on the map filed in your office on the 3rd December last, for the purpose of exhibiting the definite location of the road. In view of the grant of lands to Minnesota by the act of Congress of the 3rd of March, 1857, I see no objection to the course you propose to pursue, and herewith return the papers which accompanied your report.

Very respectfully your ob't serv't,

J. THOMPSON, *Secretary.*

The Commissioner of the General Land Office.

53 (12.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Aug. 29th*, 1859.

SIR: Herewith are returned the map of the route of the transit railroad — Minnesota and the papers relative thereto which accompanied your report of the 26th inst.

This map is recognized by the Governor of the State as a correct map of the location of the road under the law of Congress making the grant to aid in the construction of a railroad "from Winona to St. Peter, to a point on the Big Sioux river south of the forty-fifth parallel of north latitude," for so much of said road as lies between Winona and the west line of range No. 31. Beyond that the public surveys have not yet been extended, but as far as the location has been made the line of route is reasonably direct, and the general course of the road is undoubtedly such as was contemplated by the act of Congress of third of March, 1857, by which the grant was made.

It appears to be a matter of right with the State and of convenience to the United States to have the adjustment of the grant proceeded with as far as the U. S. surveys have progressed.

Sundry individuals appear to have caused another route to be examined by a competent engineer, who reports that the State might have adopted a more direct route than that now certified to us, but the Governor of the State and the officers of the company have certified the location before us as that made under the law and as the cheapest and best route between the extreme points on the map, making St. Peter an intermediate point, and the objections
54 cannot properly be interposed before this Department to arrest the adjustment of the grant according to the line of location recognized by the State authorities.

One informality in the certification by this map is observed. The Governor's certificate refers to his having caused the great seal of the State to be thereto attached, but, in fact, the seal is wanting. You can return the map to the Governor and call his attention to the fact, as the seal ought to be supplied before the Department is fully committed in the premises. When that is done there will not be any obstacle before the Department which ought to prevent the recognition of the map as the basis for the adjustment of the grant along the line of route thereby platted.

Very respectfully your ob't serv't,

J. THOMPSON, *Secretary.*

The Commissioner of the General Land Office.

Endorsed: "Hon. Secretary of the Int., August 29, 1859, returns, map, etc., of the transit R. R., submitted on the 26th inst., and approves the same. Letter to Governor of Minnesota, Sept. 22, 1859. R. Fitzhugh. Rec'd 29th of August."

55 (13.)

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *Dec.* 1*st*, 1862.

SIR: I have carefully considered your report of 9th of September upon the complaints of citizens of Meeker county, Minnesota, in a public meeting held July 24th, 1862, in regard to the course stated by them to have been adopted by the State authorities in administering the grants of land made by the United States for aid in constructing railroads. In strictness there is not a case before me requiring executive action, and therefore no actual necessity for a decision; but, as the meeting of citizens called for an expression of this Department, it seems proper to inform them what have been the views expressed and policy pursued heretofore in reference to the matter of complaint as stated. The committee appointed and the resolution adopted by the meeting complain of an act of the State Legislature concerning which this Department can express no opinion. It is a remark obvious, however, to any one that this Department administers the acts of Congress, which alone has constitutional power to make grants of public lands. When grants have been made for internal improvements or other public uses the grantee, whether a State or an individual, has no right to divert the gratuity from the use to which Congress has directed its application without the consent of that body.

The allegation of the citizens, as well as I can understand that part of their complaint, to which only it is proper for me to respond, is that a railroad company, acting under alleged authority
56 from the State, has selected and is about to sell a quantity of land along a line of road lying west of the Mississippi river, and to apply the proceeds to constructing a road from St. Paul to Anoka, on the east side of said river.

Whatever may be the exact facts, I can only state the general conclusions of law, which are plain or have been heretofore established by decisions.

Congress, by an act approved July 12th, 1862 (Stats. of 37th Cong., 2nd sess., p. 625), appears to have repealed so much of a former act of 3rd March, 1857, as granted lands to Minnesota for a railroad running in a northwestern direction between the point of intersection of the 10th standard parallel with the fourth guide meridian and a point on the navigable waters of the Red River of the North. In lieu of the previous grant thus withdrawn a new grant was proposed by the act of 1862 of alternate sections on such "new branch line of route as the authorities of the State may designate having its southwestern terminus at any point on the existing line between the Falls of St. Anthony and Crow Wing and extending in a northeasterly direction to the waters of Lake Superior," etc.

I am not now advised whether the State has duly relinquished the first grant and accepted that proposed to be substituted, but refer to this recent act merely to indicate that there does not appear to be anything in it to change the general principles of departmental construction and action which I now proceed to state.

In a decision of August 27th, 1858, my predecessor determined that the "roads" and "branches" mentioned in the act of March 3rd, 1857, are under the terms of the law to be regarded as separate and distinct railroads.

57 His decision is based on the first, second, and third sections of that act, and a copy of it may be furnished to Messrs. Smith, Whitney, and others, committee, etc., as having been the exposition adopted soon after the act of 1857 went into practical effect and adhered to until the present time. The act of 1862 above cited makes no change in the law of 1857 in this respect, but treats the "branch road" proposed to be abandoned, as well as that proposed for construction instead, each as a separate road from one terminus to the other.

If the Department has been right in deciding that the roads and branches are separate enterprises, for which Congress has made separate grants, respectively, it is clear that no land which has been granted for a particular road or branch road can be applied to the construction of any other road or branch road. On this point the first section of the act of 1857 is explicit in providing that "the lands hereby granted for and on account of said roads and branches, severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever."

Should any agents or grantees of the State of Minnesota disregard or violate this provision of the law, it is believed that parties injured can obtain relief in the judicial tribunals.

The practice of the Department has been, when any road or branch road has been duly located according to law, to proceed with the severance of the granted lands from those remaining to the United States, and to certify lists of lands granted and selected for and on account of each separate road till the quantity of each separate grant is exhausted for so much of the road as is finally located.

58

In your report of the 27th of September, 1861, upon the communication of Elias F. Drake, Esq., in reference to the authority conferred by law upon the State of Minnesota by the 4th section of the grant of 3d of March, 1857, you informed me that after lists of lands have been approved and copies of the lists delivered or transmitted to the Governor of the State your office takes no heed of what the State may do in respect to granting 120 sections under the fourth section of the act, as the work is executed for every 20 miles.

This practice was approved in my letter to you of the 14th of October, 1861, in which I stated it to be my opinion that the provisions of the fourth section of the act of Congress of March 3d, 1857, controlled the action of the Territorial and State authorities in disposing of the lands after the title has vested by the location of the road and the selections have been made in conformity to law, but that this Department has not power to control the authority conferred by that section upon the Territory or State.

I therefore decline to express in detail an opinion as to the man-

ner in which the sales provided for in that section should be made, believing that to be a matter for the consideration of the State authorities; at least, so long as there has been no reversions of any of the lands to the United States under the last clause of that section.

The certainty of title, the freedom from suspicion of invalidity, is an essential element in the price of lands; and we may there-
59 fore assume that the State and her representatives in disposing of any lands granted by Congress for railroad purposes will be induced from motives of interest to adhere strictly to the powers conferred upon them by the act of Congress making the grant.

You will please communicate these views to the committee appointed by the citizens of Meeker county, Minnesota, in answer to their letter to me of the 28th of July last, which is, with the other papers, transmitted to your office herewith to be placed on file.

Very respectfully your ob't serv't,

CALEB B. SMITH, *Secretary.*

To the Commissioner of the General Land Office.

60 (14.)

GENERAL LAND OFFICE, *May 25th*, 1864.

George L. Becker, Esq., pres't 1st Div. St. P.
and P. R. R. Co., St. Paul, Minn.

SIR: I have received your letter of the 8th inst. enclosing a map showing the line or route of the Minnesota and Pacific, now the St. Paul and Pacific Railroad, "from Stillwater, via St. Paul and St. Anthony, to the Sioux Wood river," and stating the company desires to change the route of said road as indicated thereon.

In reply I have to state: 1st. In regard to the proposed change of the same near "the east end so as to run to Minnetonka, this office cannot depart in its adjustment of the grant from the map of the definite location; yet we will take no heed of such deflection or modification that the company may find it necessary to make, it being expressly understood, however, that neither our adjustment nor the individual adverse interests are to be affected thereby. 2nd. As regards the change of the terminus of the west end from "the mouth of Sioux Wood river to the foot of Sioux Wood Lake," I have to state that, although a map of location was filed ending the road at the former point, yet as the Department in its acceptance of the same, dated May 10, 1858, refused to accept the survey from the west line of township 121, range 38, there will be no objection to the proposed change, provided on the filing of a map of the location of the road from that point to the terminus now proposed the company withdraw the claim to the lands along the route as heretofore located, from the west line of the said township and range.

61 Very respectfully your ob'd't serv't,

J. M. EDMUNDS,
Commissioner.

62 (15.)

WASHINGTON, 16*th Ap'l*, 1868.

Hon. Jas. S. Wilson, Commissioner, etc.

SIR: The main line of the St. Paul and Pacific R. R. Co. was located, you may remember, thro' to Red Wing in 1857, but the land grant was adjusted only to the west line of range 38, in consequence of the public surveys not having extended further in that direction.

During the past year the surveys have been going on in that region, and I find on examination that the following townships (thro' which our road or line runs) have been subdivided and the plats thereof returned to the General Land Office, viz:

T. 121, R. 39; T. 123, R. 40.
T. 122, R. 39; T. 123, R. 41.
T. 122, R. 40; T. 124, R. 41.

I find further that the Government surveyors, having found the line of our road (as originally located in 1857, and a map of which is now upon the files of your bureau), have marked it on the plats hereinbefore referred to.

It further appears upon examination that maps of certain other townships hereinafter indicated, and within which it is supposed our 20-mile limits (under the laws of 1857 and 1865) will fall, have also been received at the General Land Office, viz:

63 To. 117, R's 39 & 40.
" 118, " 39, 40, & 41.
To. 119, R's 39, 40, & 41.
" 120, " 39, 40, & 41.
" 121, " 40.
" 123, " 39.
" 124, " 39 & 40.
" 125, " 39, 40, & 41.
" 126, " 39, 40, & 41.
" 127, " 39, 40, & 41.
" 128, " 41.
" 129, " 42.

Our judgment and opinion is that the original location of the line was sufficient under the law to protect us from any and all claims within our prescribed limits predicated upon settlements made subsequently to that location.

Under any and all circumstances, however, we earnestly ask the office to take steps now and at the earliest possible moment (inasmuch as settlers are fast moving into and occupying this region of the country) such as may and will protect us in our rights under these laws (of 1857 and 1865), and enable us to have the grant adjusted, not only as regards these townships, the plats of which have been lately received, but also others on the line of our road and within its prescribed limits and which may from time to time in the future be received.

Very resp'y, NATH. POPE CAUSIN,
Att'y for Road.

64 (16.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *May 4th*, 1868.

N. P. Causin, Esq.,
Att'y St. Paul & Pacific Railroad Company, Washington city.

SIR: I have to acknowledge yours of the 16th ult., stating that the surveyors in surveying the lands in the western part of Minnesota found the line of your road as originally located in 1857, and have marked the same on the official plats, and it is now asked that this office will immediately withdraw the lands within the limits of the grants under the acts of 1857 and 1865.

The western termination of the present withdrawal for this road is the west line of range 38 W., and your application is for the withdrawal of the land from that point to the western terminus of the road. An examination of the plats designated by you, to wit, T. 121 and 122, R. 39 W., T. 122 and 123, R. 40 W., and T. 123 and 124, R. 41 W., then [shows] the line of your road marked out thereon, and upon this you ask a withdrawal.

In reply I state that if the company, in connection with the Governor of the State, will officially accept the line as laid down on these plats as their line of definite location, then, upon such official acceptance being filed in this office, an immediate withdrawal of the lands granted by the acts of 1857 and 1865 to the extent of the surveys will be ordered.

Very respectfully, your obedient serv't,

JAS. S. WILSON,
Commissioner.

65 (17.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *August 14th*, 1868.

Register and receiver, St. Cloud, Minn.

GENTLEMEN: I enclose herewith a diagram showing the line of actual location of the Minnesota and Pacific railroad from the west line of range 38 W. to the west line of range 41 W. and through townships 121 to 124, incl.; also showing the 6 and 15 mile limits of the grant under the act of 1857 and the additional 10 and 20 mile limits under the act of 1865.

You are hereby directed to withdraw from sale or location, pre-emption or homestead entry, or other disposal, except on account of the grant, all the odd-numbered sections of land falling within the limits of twenty miles on each side of the road. The even-numbered sections within ten miles on each side of the line of route are hereby increased in price to $2.50 per acre, and will be subject to pre-emption & homestead entry at that ratability, but not subject to private entry until duly offered for sale at the increased price.

The even sections outside of the ten-mile limits are not affected by this letter.

This withdrawal will take effect from the date of the receipt of this letter, and you are requested to inform us without delay of the exact date of its reception.

Very respectfully, your ob't serv't,

JAS. S. WILSON,
Commissioner.

66 (18.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *August 14th*, 1868.

Register and receiver, Greenleaf, Minn.

GENTLEMEN: I enclose herewith a diagram showing the line of actual location of the Minnesota and Pacific railroad from the west line of range 38 W. to the west line of range 41 W. and through townships 117 to 120, inclu.; also showing the 6 and 15 mile limits of the grant under the act of 1857 and the additional 10 and 20 mile limits under the act of 1865.

You are hereby directed to withdraw from sale or location, pre-emption or homestead entry, or other disposal, except on account of the grant, all the odd-numbered sections of land falling within the limits of 20 miles on each side of the road. The even-numbered sections within ten miles on each side of the line of route are hereby increased in price to $2.50 per acre, and will be subject to pre-emption and homestead entry at that ratability, but not subject to private entry until duly offered for sale at the increased price.

The even sections outside of the ten-mile limits are not affected by this letter.

The withdrawal will take effect from the date of the receipt of this letter, and you are requested to inform us without delay of the exact date of its reception.

Very respectfully, your ob't serv't,

JAS. S. WILSON,
Commissioner.

67 (19.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *March* 17, 1869.

Register and receiver, St. Cloud, Minn.

GENTLEMEN: Referring to our letter of yesterday, relative to the withdrawal for the St. Paul and Pacific railroad, I herewith enclose the copy of the letter of this office, dated August 14th, 1868, therein referred to, and which was inadvertently omitted with our yesterday's letter.

Very respectfully, JAS. S. WILSON,
Commissioner.

68 (20.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *April 12th*, 1869.

Register and receiver, Alexandria, Minn.

GENTLEMEN: By letter of 14th of August, 1868, the local officers at St. Cloud were furnished with a diagram of the St. Paul and Pacific railroad and land limits from west line range 38 W. to west line range 41 W., and were directed to withdraw the odd-numbered sections in those limits from disposal.

The even sections within the ten-mile limits were increased in price to $2.50 per acre and made subject to pre-emption and homestead entry only, at that ratability. It appears, however, that that office failed to receive the same.

We have therefore transmitted a new diagram with that part which now falls within the limits of their district; and herewith transmit to you a map of that part formerly in said district, but now falling within the boundaries of your district.

I have now to request that you apply the same instructions to the land within those limits—that is, to withdraw all the odd-numbered sections within the 20 mile limits from pre-emption or homestead, sale or location, and increase the price of the even-numbered sections within the 10-mile limit to $2.50 per acre, and dispose of the same at that ratability under the pre-emption and homestead laws only. Be pleased to acknowledge the receipt of this by date.

69 Very respectfully, JAS. S. WILSON,
Commissioner.

70 (21.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *May 25th*, 1869.

Register and receiver, Alexandria, Minn.

GENTLEMEN: The St. Paul and Pacific Railroad Co. having filed, in connection with the public surveys, a map of their line of route from the west line of range 41 W. to Breckenridge, I herewith enclose a diagram of same lying within your district, together with the limits of the land grants of March 3rd, 1857 and 1865, being the 6 and 15, 10 and 20-mile limits, and you are hereby directed to withdraw from sale or location, pre-emption or homestead entry, all the odd-numbered sections within those limits, and to increase in price to $2.50 per acre all the even-numbered sections within the limits of 10 miles on each side of the line of route. You will make exception to this order in favor of *bona fide* settlers who may show settlement prior to the receipt of this letter. In such cases you will permit the party to make proof and payment for either odd or even sections at $1.25 per acre, in virtue of the act of 27th of March, 1854, for the relief of settlers on lands withdrawn for railroad purposes.

This order will take effect from the date of its receipt at your office, and you are requested to acknowledge the day it may be so received.

Very respectfully, JAS. S. WILSON,
Commissioner.

71 (22.)

FIRST DIVISION ST. PAUL AND PACIFIC
RAILROAD COMPANY,
LAND DEPARTMENT, ST. PAUL, *September 7th*, 1871.

Hon. Willis Drummond, Commissioner U. S. Land Office, Washington, D. C.

DEAR SIR: I take the liberty to hand you herewith a map showing the original location of the main line of this company, according to which the limit lines of the land grant belonging to this line have been determined within the State of Minnesota, as shown.

You will observe that on the west side of the R. R. line and west of the Bois de Sioux river no surveys have yet been made and no land limits located.

I would respectfully call your attention to the fact that the act of Congress making our grant was approved March 3rd, 1857.

That in the month of September of the same year our line was located.

That at that time the Territory of Minnesota extended to the Missouri river, and it was then self understood that our land limits would be extended west of the Bois de Sioux river.

The fact that the Territory of Minnesota was subsequently divided and the State of Minnesota established, with the Bois de Sioux river as part of its western boundary, throwing part of the original area of the Territory of Minnesota into the new Territory of
72 Dakota, should not debar this company from receiving the lands nearest to its line within its proper limits, as originally contemplated.

I would therefore respectfully request that the lands west of the Bois de Sioux river be surveyed and submitted at as early a date as possible, and the land limits extended, as indicated on the accompanying map.

The whole line is almost completed, being graded all the way and the iron laid to a point within thirty miles of Breckenridge. We confidently expect to open the road for general business some time during the coming month, in view of which fact I respectfully ask for an early consideration of this subject, and remain,

Very respectfully, your obedient servant,

HERMANN TROTT,
Land Comm'r.

73 (23.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *November* 24, 1871.

Hermann Trott, Esq., land commissioner St. Paul and Pacific railroad, St. Paul, Minn.

SIR: I have considered your communication of the 7th ult. and that of N. P. Causin of the 17th inst. transmitting map showing the limits of land grant to the St. Paul and Pacific railroad in the Territory of Dakota and asking withdrawal of same.

You present the argument that that part of Dakota covered by the limits of your grant was a part of the Territory of Minnesota at the date of the act of 3rd March, 1857, making a grant of lands to said latter Territory for your road, and that the subsequent formation of the boundaries of the State of Minnesota, whereby these lands were made a part of Dakota Territory, could not defeat your right thereto.

The granting act gives to the Territory of Minnesota certain lands to aid in the construction of what is now known as the St. Paul and Pacific railroad. The act further provides, however, that the lands shall be held by the "Territory or future State of Minnesota" for the use and purposes indicated, and that the lands granted to the said "Territory" or future "State" shall be sold only as the road shall be built in sections of twenty miles. Thus no absolute title could be acquired by the Territory or State except as the road should
74 be constructed, and the extent of that title or grant must be governed by the geographical status or limit of the grantee at the time when the title would absolutely vest, and most particularly so when the object of the grant is wholly, as in this case, within those geographical limits.

Now, the words "future State" must, of course, have been used in anticipation of the Territory of Minnesota or a part thereof becoming a State before the completion of the road, and this is a natural conclusion, from the fact that an act had already passed (Feb. 26, 1857) authorizing the people of the Territory to form a State government and defining the boundaries of said State as they now exist.

Now, if the Territory of Minnesota could have acquired title to the lands through the completion of the road prior to the admission of the State I have no doubt that she would have been entitled to the lands now embraced in Dakota Territory. Since, however, that part of the road on the west boundary was not completed prior to the act of admission the grant for that portion becomes a grant to the State and not to the Territory of Minnesota, and in my opinion must be confined to the limit of said State.

I may further add that the 6th section of the act declares that no title shall accrue to any lands in any Indian territory until the Indian title shall have been extinguished. Now, the lands in Dakota Territory which you ask to have withdrawn still forms part of the Indian territory claimed by the Sisseton and Wahpeton bands of Sioux Indians, as shown by the second article of the treaty of February 19th, 1867, with said Indians; therefore, even admitting the

right of the company through the State, the lands are not at present in condition to be dealt with in connection with the grant.

75 For the above reasons I decline to order withdrawl of the lands.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

76 (24.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *April* 24, 1872.

Enoch Totten, Esq., attorney Winona and St. Peter R. R. Co.

SIR: I have considered your argument in the matter of the application of the Winona and St. Peter R. R. Co. for the withdrawal of the land along the line of its route between the west line of Minnesota and the Big Sioux river in Dakota Territory.

This road obtains its land grant under the acts of March 3rd, 1857 and 1865.

The first act is for a grant of land from Winona by the way of St. Peter to a point on the Big Sioux river south of the 45th parallel of north latitude. The act of 1865 enlarges the grant and directs how title shall be acquired, which latter point was modified by the law of 13th July, 1866, a matter, however, which has no bearing upon the question at issue.

At the date of the passage of the act of 3rd of March, 1857, there had already been passed by Congress an act authorizing the Territory to form a State government and fixing the boundaries of such future State, notwithstanding which Congress saw fit by the granting act to authorize the construction of a road beyond said State boundaries and extending into a then unorganized Territory and granting to the Territory or future State of Minnesota a certain quantity of land for every twenty miles of said road and along its entire length.

77 Had the termination of the line been within the boundaries of the State of Minnesota I do not for a moment doubt that the land grant must be confined to the limits of said State, but it would be a singular anomaly of legislation if Congress should grant to a State land for a road fixing one of its termini beyond the limits of the State and not in the bounds of any other State, but within a public territory, and then require forty, fifty, or perhaps more miles of said road to be built without the aid of any land grant merely because by prior legislation it had fixed the bounds of the State at a point east of the terminal point of the road.

I cannot believe that such was the purpose Congress had in view, but rather that it was the intention of that body to give to the road in question an amount of land equal to ten sections per mile for each mile of road built, and along the entire length of the road to its termination, as fixed by the law.

With this view I have ordered the withdrawal of the lands in

Dakota Territory upon the line of route as located by the company in 1866.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

78 (25.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *May 2nd*, 1872.

Register and receiver, Vermillion, D. T.

GENTLEMEN: I transmit herewith a diagram showing the location of the Winona and St. Peter railroad in Dakota Ty., from the eastern boundary of the Territory to a point on the Big Sioux river, showing also the ten and twenty mile limits of the land grant under acts of Congress approved March 3rd, 1857, and March 3rd, 1865, and you are hereby directed to withhold from sale or location, pre-emption or homestead entry, all the odd-numbered sections within those limits, surveyed or unsurveyed.

You will therefore, as fast as the township plats of survey are received at your office, make the proper notes thereon indicating the reserve of all odd sections within the twenty-mile limits of said road for the purposes of the grant.

The even-numbered sections within the ten-mile limits you will hold at $2.50 per acre and subject to entry under the pre-emption and homestead laws only.

The even sections between the ten and twenty mile limits (or indemnity limits) are not affected by this withdrawal.

The right of the road attaches to the odd sections within the ten-mile or granted limits from the date of the receipt of this letter by you and within the twenty-mile or indemnity limits from the date of the receipt of the township plats at your office, and you will accordingly recognize no claims initiated subsequent to those dates.

79 Where, however, settlers may have entered upon odd sections within the indemnity limits prior to survey under the pre-emption laws you will recognize their rights to file.

You will please acknowledge the date of the receipt of this letter.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

80 (26.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *June 19th*, 1873.

Register and receiver, Sioux Falls, D. T.

GENTLEMEN: I transmit herewith a diagram showing the definite location of the Winona and St. Peter railroad in Dakota Territory, from the eastern boundary of the Territory to a point on the Big Sioux river, showing also the ten and twenty mile limits of the land grant to said road, colored, respectively, red and blue. I have also

indicated the ten and twenty mile limits of the former withdrawal for said road ordered by letter to you of May 2nd, 1872, upon a proposed line, colored, respectively, yellow and pink.

You are accordingly hereby directed to withhold from sale or entry all the odd-numbered sections or parts of sections, surveyed or unsurveyed, not heretofore withdrawn, but which now fall within the corrected twenty-mile limits, as shown on the diagram in blue, and to restore to pre-emption and homestead entry all the odd-numbered sections or parts of sections heretofore withdrawn, but now falling without the corrected limits.

The even-numbered sections not heretofore included within the ten-mile limits, but which now fall within the corrected ten-mile limits (colored red), you will increase in price to $2 per acre, and such even-numbered sections or parts of sections as have been heretofore held at $2.50 per acre, but which now fall without the corrected ten-mile limits, you will reduce in price to $1.25 per acre.

81 The additional withdrawal of odd sections and increase in price of even sections, as above, will take effect from the date of the receipt of this letter by you, but to give proper notice of the restoration and reduction in price you will give notice by publication in the newspaper having the largest circulation in your district that upon a day to be fixed by you, and not less than thirty days from the day of notice, the tract to be restored will again become subject to pre-emption and homestead entry, and the even sections reduced to $1.25 per acre.

The tracts to be restored are the following, to wit:

	T.	R.
Section 15 and E. ½ sec. 17	119	47
" 1 & 3	"	48
" 25	120	49
" 13 & 15 & N. ½ sec. 17	"	50
N. ½ sec. 13	"	51
S. W. ¼ 15	111	47
S. ½ sec. 27 & sec. 35	112	48
S. ½ 33	113	49
S. ½ sec. 7, S. W. ¼ 15, & S. ½ 23	"	50
S. ½ 31	114	"
S. ½ 25 & S. ½ sec. 27	114	53

The tracts to be reduced in price are the following, to wit:

N. ½ sec. 8 & N. ½ sec. 10	117	47
N. E. ¼ sec. 2	"	48
N. ½ " 34	118	"
N. ½ " 22 & N. ½ sec. 24	"	49
Sec. 12	"	50
N. ½ sec. 2	"	51
N. ½ " 34 & N. ½ sec. 36	119	52
Sec. 6 & N. W. ¼ & S. ½ sec. 8	113	47
" 18	115	48
S. W. ¼ sec. 18	115	50
S. ½ " 2	"	53

82 The notice you will cause to be published not less than once a week for four successive weeks, the same to be paid for by the receiver as disbursing agent, he entering it in his proper account and sending as voucher a copy of the notice with publisher's certificate of publication and his receipt for payment. You will also immediately upon publication send a copy of the paper containing the notice to this office.

Where the lands are unsurveyed at the date of restoration and reduction the same will take effect from the date of the receipt of the township plats of survey at your office.

Be pleased to acknowledge the date of the receipt of this letter.

Very respectfully, W. W. CURTIS,
Acting Commissioner.

83 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Sept.* 2, 1874.

Register and receiver, Sioux Falls, Dakota.

GENTLEMEN: The Secretary of the Interior, under date of 21st of March last, decided that the grant to the Winona and St. Peter Railroad Company terminated at the point where the road first strikes the Big Sioux river in Dakota, and that the map of constructed road filed in this office should be considered as the map of definite location.

I have caused to be prepared a diagram, which is herewith transmitted, showing the ten and twenty mile limits of the grant as established in accordance with said decision.

You will accordingly, from the date of the receipt of this order, be governed by the same in the disposal of the lands, withdrawing from sale or entry all the odd sections within the twenty-mile limits not already withdrawn and holding the even sections within the ten-mile limits at two dollars and fifty cents per acre.

The odd sections heretofore withdrawn or even sections held at the double minimum price, which by reason of the change of limits now fall without the grant, will be held subject to pre-emption and homestead entry as though they had never been withdrawn.

The right of the company under the law attaches to their grant from the date of the definite location of the road.

84 If found necessary in the adjustment of claims they will be required to show when the line upon which the road was actually constructed was definitely fixed.

Since the said decision was made the company has filed a claim for the lands embraced in a radius of twenty miles beyond the terminus as indemnity, which claim was rejected by this office on the 14 May, 1874, and is now pending on appeal before the Secretary.

You will therefore still hold withdrawn the lands embraced in the former withdrawal of May 20th, 1872, and June 19, 1873, west of the line marking the termination of the grant upon the map herewith until further instructions, and permit no entry or other disposal of the same.

The company has acceded to the adjustment of the limits eastward from the Big Sioux, as hereon indicated, and desires to make selections up to that point, which you are authorized to permit.

Please acknowledge the receipt of this letter and refer to it as F by date.

Very respectfully, S. S. BURDETT,
Commissioner.

85 On the 6th day of October, 1886, the following stipulation and order for the transmission of maps to the U. S. Supreme Court was filed in this cause, said stipulation and order being in the words and figures following:

Stipulation and Order.

In the Circuit Court of the United States for the District of Minnesota.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO. *vs.* RANSOM PHELPS. } In Equity.

It is hereby stipulated that the following-described maps introduced in evidence in this cause, to wit:

1. Two certain maps of the main line of the Minnesota and Pacific railroad, both certified by the auditor of State and *ex officio* commissioner of the State land office of Minnesota, under date of December 24, 1884; also,

2. A map of the completed main line of the 1st Division of the St. Paul and Pacific railroad, certified by the same officer and under the same date; also,

3. Map showing definite location of the main line of the St. Paul and Pacific railroad from section twenty-one, town. 129, range 45, to a point in section 9, town. 132, range 47; also a certain other map or part of the Minnesota and Pacific railroad between the Pome de Terre and the Bois des Sioux rivers.

86 Both said maps certified January 11th, 1884, by the Commissioner of the General Land Office; also,

4. A certified copy of diagram of location of a portion of the said main line terminating at Breckenridge, certified by E. M. Johnson, register of land office, and filed in U. S. land office, Alexandria, June 5, 1869—may be transmitted to the Supreme Court of the United States as part of the return on appeal to said court in this cause in lieu of copies thereof.

II.

And it is further stipulated that a certain map of the location of the main line of the St. Paul and Pacific railroad from St. Paul to Breckenridge, certified by M. D. Kenyon, deputy State auditor and acting land commissioner of the State of Minnesota, under date of September 15, 1885, and introduced in evidence and used on behalf

of said complainant at the hearing of this cause, may be produced and used at the hearing of this cause, upon the appeal therein to the Supreme Court of the United States, in like manner as if the same or a copy thereof had been included in the return to said Supreme Court on said appeal.

Dated October 6th, 1886.

R. B. GALUSHA,
Solicitor for Complainant.
W. P. CLOUGH,
Solicitor for Defendant.

On reading the foregoing stipulation it is ordered that the maps therein described be transmitted to the Supreme Court of the United States in lieu of copies thereof, in accordance with this stipulation.

Dated October 9th, 1886.

R. R. NELSON, *Judge.*

87 And afterwards, to wit, on the 15th day of September, A. D. 1885, the cause was heard and by the court taken under advisement, as appears by order entered of record in Term Minutes "F," page 770, said order being in the words and figures following viz:

Order Submitting Cause.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY CO.
vs.
RANSOM PHELPS.

This cause regularly coming on for trial, the complainant appeared by R. B. Galusha, Esq., S. U. Pinney, Esq., and George B. Young, Esq., its solicitors, and the defendant by W. P. Clough, Esq., his solicitor. Thereupon said cause is argued by said solicitors, duly submitted, and by the court taken under advisement.

And afterwards, to wit, on the 3rd day of March, A. D. 1885, an opinion was filed in this cause, said opinion being in the words and figures following, viz:

Opinion.

88 United States Circuit Court, District of Minnesota.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
RANSOM PHELPS.

The controversy in this case arises under the act of Mar. 3, 1857, granting lands to the Territory of Minnesota to aid in the construction of certain railroads. That portion of the grant which is material reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and

is hereby, granted to the Territory of Minnesota, for the purpose of aiding in the construction of railroads from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, at such point as the Legislature of said Territory may determine, from St. Paul and from St. Anthony via Minneapolis to a convenient point of junction west of the Mississippi, to the southern boundary of the Territory, in the direction of the mouth of Bix Sioux river, with a branch via Faribault to the north line of the State of Iowa, west of range sixteen, from Winona via St. Peter to a point on the Bix Sioux river south of the forty-fifth parallel of north latitude; also from La Crescent via Target Lake up the valley of Root river to a point of junction with the last-mentioned road east of range seventeen, every alternate section of land designated by odd numbers for six sections in width on each side of each of said
89 roads and branches."

The western terminus of the first main line above provided for was, by the Legislature of Minnesota, fixed at Breckenridge, and the road was completed to that place. The land in controversy lies within six miles of this road, and it is conceded that if it is within the foregoing grant the title of complainant is good. Indeed the concessions of counsel eliminate all questions but two.

First. It is claimed that because the land is situated outside the State of Minnesota it is not within the grant. The facts are these: At the time of this grant, March 3, 1857, Minnesota was yet a Territory, its western boundary being the Missouri river. On February 26, 1857, about a week prior thereto, Congress had passed an enabling act, 11 U. S. Stat. at Large, 166.

By this enabling act the western boundary of the proposed new State of Minnesota was designated as follows:

"Beginning at the point in the center of the main channel of the Red River of the North where the boundary line between the United States and the British Possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence up the main channel of said river to Lake Traverse; thence up the centre of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone Lake; thence through its centre to its outlet; thence by a due south line to the north line of the State of Iowa."

Under this enabling act the State was organized and admitted into the Union the succeeding year.

Breckenridge, the place named as the terminus, is situated
90 at the junction of the Bois des Sioux and Red rivers and on the western boundary of the State. The land in controversy is west of the Bois des Sioux river and in the present Territory of Dakota.

Now, that, tried by its letter, the grant would include lands west of the Bois des Sioux river and in Dakota is obvious, and that Congress has the power to grant to a State lands in another State or Territory to aid in the construction of a road wholly within its limits

is conceded; but the contention is that "it has been the uniform and settled policy of the Government to confine land grants made in aid of the construction of railroads lying wholly within a given State or Territory to lands lying within the same State or Territory;" that Congress must be presumed to have legislated in conformity with that policy, and, having before it the strong probability, almost certainty, that Minnesota would become a State under the provisions of the enabling act just passed, fixed the western terminus of this road at the western boundary of the proposed State, and thereby limited the grant to such boundary.

Counsel for complainant deny that the cases cited warrant the conclusion as to the settled policy of the Government, or that there has been any such settled policy; deny that Congress fixed the terminus at the western boundary of the proposed State, and rest upon the letter of the grant. The first case cited is on the construction given to the act of Sep. 20, 1850, 9 U. S. Stat. at Large, 466, granting lands to the State of Illinois to aid in the construction of what is now known as the Illinois Central railroad. The seventh action [section] reads as follows:

91 "And be it further enacted, That, in order to aid in the continuation of said Central railroad from the mouth of the Ohio river to the city of Mobile, all the rights, privileges, and liabilities hereinbefore conferred on the State of Illinois shall be granted to the States of Alabama and Mississippi, respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio river, and that the public lands of the United States, to the same extent, in proportion to the length of the road, on the same terms, limitations, and restrictions in every respect, shall be, and is [are] hereby, granted to — States of Alabama and Mississippi, respectively."

A claim of the States of Alabama and Mississippi to a grant proportioned to the entire length of the line from Mobile to the Ohio river was denied, the opinion of the Attorney General thus stating the rule: "The whole length of the railroad through and within the State of Alabama then actually surveyed and definitely located within that State, under the direction of the Legislature thereof, must determine and limit and define the extent of the grant to that State, and so likewise the whole extent of the railroad within the State of Mississippi, as surveyed and definitely fixed under the direction of the Legislature thereof, must determine, limit, and define the extent of the grant to that State."

A similar expression of opinion came from the Attorney General construing the act of May 17, 1856, entitled "An act granting public lands in alternate sections of the States of Florida and Alabama to aid in the construction of certain railroads in said States."

92 11 U. S. Stat. at Large, 15.

On Nov. 24, 1871, in denying an application of the land commissioner of the St. Paul & Pacific R. R. Co. for a survey and extension of its grant to these lands west of the Bois des Sioux river, the Commissioner of the General Land Office ruled that the grant was confined to the limits of the State.

Now, while the prior cases cited may not be strictly in point, yet I think in them is found the rule of the limitation of congressional grants to State lines. While I am not sufficiently familiar with the history of the Land Department to affirm it as a fact, yet, in view of these rulings, of the confident assertion of counsel, and as no single opposing ruling or action is shown, I think it not improper to assume that the uniform ruling and construction has been stated. Indeed, when I recall the discussions and controversies which arose in the early history of this nation in respect to claims by certain States, Connecticut, New York, and Virginia, to the ownership of large bodies of lands beyond their territorial limits, I do not wonder at such ruling. This very act of 1857 presents other cases in which the very question existed, and the construction given by the Department could easily have been shown. I think it obvious that Congress had in view the probable organization of Minnesota as a State under the enabling act just passed. It speaks of the future State of Minnesota as though the admission of a State with that name was to be soon expected; and while it may be true that a direct line between the foot of Big Stone Lake and the mouth of
93 the Sioux Wood river may cross the State line in two or more places, yet the mention of those places very forcibly suggests that Congress was intending thereby to locate the western terminus on the western boundary of the proposed State. If so, was it not legislating in reference to the proposed State, and should its grant not be limited by the ordinary rule? I am aware that in this act provision was made for a road running beyond the western boundary of the proposed State and into the present Territory of Dakota, with a grant of adjacent lands which could be satisfied only by lands in Dakota, and which was in fact so satisfied. But the fact that Congress provided for a road outside of the State limits does not make against the claim that it intended only the ordinary provision for a road wholly within the State. I confess that the line of reasoning above pursued is not altogether satisfactory; it seems counter to the plain letter of the statute; but the ruling of the Department was made in 1871. This bill was filed only Ap. 29, 1884. For thirteen years the action of the Department has been unchallenged. Interests may have grown up on the faith of it. Indeed, counsel for defendant says that a large and flourishing village, Wahpeton, has been built upon lands whose title is similar. There are some plausible, if not convincing, reasons in favor of the ruling of the Department. I am reluctant to reverse such ruling or jeopardize the rights based upon it. I think my duty compels me to sustain it until advised otherwise by the ultimate tribunal, the Supreme Court. So, without considering the other question, the bill will be dismissed at complainant's costs.

94 And on the same day, to wit, the 3rd day of March, A. D. 1885, the following order was entered, pursuant to opinion rendered, dismissing bill at complainant's costs, said order being entered of record in Term Minutes "G," page 161, in the words and figures following, viz:

Order Dismissing Bill at Complainant's Cost.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
RANSOM PHELPS.

This cause having been heretofore fully heard upon the pleadings, final proofs, agreed statement of facts, and arguments of the solicitors for the respective parties, duly submitted, and by the court taken under advisement, now the court, after due consideration thereof and being fully advised in the premises, announces its decision concerning the same and files said decision in writing herein. Pursuant to said decision it is considered, ordered, and adjudged by the court that a decree be entered herein dismissing the bill at complainant's cost.

95 And afterwards, to wit, on the 4th day of March, A. D. 1886, the following final decree was filed and entered of record in Term Minutes "G," page 168, in the words and figures following, viz:

Final Decree and Order Allowing Appeal.

United States Circuit Court, District of Minnesota.

Term Minutes, December Term, A. D. 1885, March 4th, 1886.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
RANSOM PHELPS.

This cause came on to be heard upon the pleadings and proofs and agreed statement of facts, and was argued by counsel for the respective parties, and upon consideration thereof it is now here adjudged and decreed that the said complainant's bill of complaint in this cause be, and the same hereby is, dismissed for want of equity, with costs to be taxed against said complainant and in favor of said defendant.

And hereupon, the said complainant praying an appeal to the Supreme Court of the United States, the same is hereby allowed upon said complainant filing a bond, with sureties, in the sum of five hundred dollars, conditioned according to law, to be approved by a judge of this court.

DAVID J. BREWER,
Circuit Judge.

96 And afterwards, to wit, on the 11th day of March, A. D. 1886, the following bond on appeal was filed and entered of record in this cause, said bond being in the words and figures following, viz:

Bond on Appeal.

Supreme Court of the United States.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
RANSOM PHELPS.

Know all men by these presents that we, H. C. Ives and A. L. Mohler, of the city of Saint Paul, in the State of Minnesota, are held and firmly bound unto Ransom Phelps, of Marshall county, in said State, in the sum of five hundred dollars, to be paid to the said Ransom Phelps, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 8th day of March, A. D. 1886.

Whereas the above-named Saint Paul, Minneapolis and Manitoba Railway Company hath taken an appeal to the Supreme Court of the United States to reverse the decree made and rendered in the above-entitled cause by the circuit court of the United States for the district of Minnesota:

Now, therefore, the condition of this obligation is such that if the above-named Saint Paul, Minneapolis and Manitoba Railway Company shall prosecute its said appeal to effect and answer all
97 costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

H. C. IVES. [SEAL.]
A. L. MOHLER. [SEAL.]

Sealed and delivered in presence of—
R. B. GALUSHA &
HENRY KROGSTEAD.

DISTRICT OF MINNESOTA, *ss:*

H. C. Ives and A. L. Mohler, of the city of Saint Paul, in said district, each for himself, being duly sworn, says that he is worth the sum of one hundred thousand dollars over and above all debts by him owing in property situated in said district not exempt by law from execution, and that he is a resident and freeholder of said city of St. Paul; and further saith not.

H. C. IVES.
A. L. MOHLER.

Subscribed and sworn to before me this 8th day of March, 1886.
[SEAL OF NOTARY.] HENRY KROGSTEAD,
Notary Public, Ramsey County, Minnesota.

Endorsed on back: "Approved in open court March 11th, 1886, David J. Brewer, circuit judge." "Filed March 11th, 1886. Oscar B. Hillis, clerk."

98 UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES, *District of Minnesota*, } ss:

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable Supreme Court of the United States that the foregoing, consisting of 98 pages, numbered consecutively from 1 to 98, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court.

U. S. Circuit Court Seal, Dist. of Minnesota.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 12th day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and 11th year.

OSCAR B. HILLIS, *Clerk*,
By L. P. RICHARDSON, *Deputy*.

[Endorsed:] United States circuit court, district of Minnesota. —— —— *vs.* —— ——. Return to Supreme Court.

Endorsed on cover: Minnesota C. C. U. S. No. 247. The St. Paul, Minneapolis & Manitoba Railway Company, appellant, *vs.* Ransom Phelps. Filed October 25, 1886.

Office Supreme Court U. S.
FILED,
APR 9 1890
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 247.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, *Appellant*,

vs.

RANSOM PHELPS.

APPELLANT'S BRIEF.

S. U. PINNEY,
Of Counsel for Appellant.

Horace A. Taylor, Printer and Stereotyper, Madison, Wis.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 247.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, *Appellant*,

vs.

RANSOM PHELPS.

BRIEF FOR APPELLANT.

This is an appeal from the decree of the circuit court for the district of Minnesota, dismissing the complainant's bill.

The bill was filed for the purpose of quieting and protecting the equitable title to, and removing a cloud from, the title of the east half of the southeast quarter of section 13, township 132, range 48, Richland county, North Dakota.

The complainant claims the land in question under the grants of March 3, 1857, and March 3, 1865. 11 Stat., 195; 13 Stat., 526. It is within the six-mile or place limits of the grant of 1857.

The grant of 1857 is as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby granted to the territory of Minnesota, for the purpose of aiding in the construction of railroads *from Stillwater, by way of Saint Paul and Saint Anthony, to a point between the foot of Big Stone lake and the mouth of Sioux Wood river*, with a branch *via* Saint Cloud and Crow Wing, to the navigable waters of the Red River of the North, *at such point as the legislature of said territory may determine;* from Saint Paul and from Saint Anthony, *via* Minneapolis, to a convenient point of junction west of the Mississippi to the southern boundary of the territory in the direction of the mouth of the Big Sioux river, with a branch *via* Faribault, to the north line of the state of Iowa, west of range sixteen; from Winona, *via* Saint Peter, to a point on the Big Sioux river, south of the forty-fifth parallel of north latitude; also from La Crescent, *via* Target lake, up the valley of Root river, to a point of junction with the last-mentioned road east of range seventeen,— every alternative section of land designated by odd numbers for six sections in width on each side of said roads and branches; but in case it shall appear that the United States have, when the lines or routes of said roads and branches are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of the territory or future state to select, subject to the approval of the secretary of the interior, from the lands of the United States nearest to the tiers of sections above specified, so much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid) shall be held by the territory or future state of Minnesota for the use and purpose aforesaid: *Provided*, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads or branches, and selected for and on account of each of said roads or branches. . . ." 11 Stat., 195; 13 Stat., 526; P. Rec., 1, 2.

Section 3 of the same act provides:

"That the said lands hereby granted to the *said territory or future state* shall be subject to the future disposal of the legislature thereof for the purposes herein expressed and no other." 11 Stat., 196; P. Rec., 2.

Section 4 provides:

"That the land hereby granted to *said territory or future state* shall be disposed of by said territory or future state only." 11 Stat., 196; P. Rec., 2.

On May 22, 1857, the territory of Minnesota passed an act creating the Minnesota & Pacific Railroad Company, and conferred upon that company the lands granted by the act of March 3, 1857, for the purpose of building the railroads mentioned in that act, and also fixed *the town of Breckenridge* at the mouth of the Sioux Wood river as the point "between the foot of Big Stone lake and the mouth of the Sioux Wood river" to which the railroad should be built. O. Rec., 2, 36½; P. Rec., 3.

The line of definite location of about half of the line was fixed December 5, 1857, by the filing of a map with resolutions adopting the same in the general land office. O. Rec., 2, 36½. At that time the government surveys had not reached as far west as Breckenridge, and the map and location were accepted only so far as the government surveys had then extended. O. Rec., 2, 50, 51.

Prior to May 25, 1869, the remaining part of the line was definitely located to Breckenridge by the filing of the map of definite location; the public surveys having then extended to that point. This location was duly approved. O. Rec., 70.

The railroad was completed to Breckenridge October 25, 1871, within the time allowed by the act of March 3, 1865. O. Rec., 11, 36½; 13 Stat., 527.

The lands in question are within six miles of the line of definite location of the road, and are claimed to be within the place limits of the grant. Map on file and O. Rec., 85.

The complainant claims to be entitled to the lands in question by virtue of various sales on foreclosure under trust deeds given by the Minnesota & Pacific R. R. Co., and through mesne assignments from that company, all of which have been confirmed by the legislature of Minnesota and are admitted by the defendant. O. Rec., 1–12, 16, 17, 19, 20, 21, 36½.

The title of the defendant is founded upon the fact that the lands in question are within the fifty-mile indemnity limits of the grant to the Northern Pacific Railroad Company, *i. e.*, within the additional indemnity limit given by the act of May 31, 1870 (16 U. S. Stat., 378); that its road was completed opposite to the lands in controversy July 1, 1872, and said lands were selected by that company as indemnity lands prior to January 15, 1875, and it thereafter conveyed the same, as far in law as it was able to do so, to the defendant. It does not appear that such selection was ever approved by the Secretary of the Interior. O. Rec., 36¾.

In the adjustment of the complainant's grant the Secretary of the Interior has refused to certify to the territory or state of Minnesota any lands lying west of the Bois des Sioux river, including the lands in question, for the alleged reason that the limits of its grant do not extend west of the east bank of that river. P. Rec., 44.

The theory upon which this ruling is based is as follows: When the grant of March 3, 1857, was made, congress had just passed an act, approved February 26, 1857, for the division of Minnesota territory, and for the formation of a state government. 11 Stat., 166. By this act the western boundary of the proposed state of Minnesota was to run up the main channel of the Red River of the North to the Bois des Sioux; thence up the main channel of that river to Lake Traverse; thence up the center of said lake to the south end thereof; thence on a direct line to the head of

Big Stone lake. 11 U. S. Stat., 166. At the date of the grant Minnesota territory extended west to the Missouri river.

It is argued that although the grant, as increased by the act of March 3, 1865 (13 U. S. Stat., 526), expressly includes the odd-numbered sections within ten miles on each side of the center line of the road, yet that Congress must be presumed to have intended to limit the grant to the proposed future state, and, notwithstanding the clear and express terms of the grant, did not intend to include lands then within the territory of Minnesota, but which might afterward be, and are now, in Dakota. It is claimed that it has been the settled policy of the government to confine land grants made in aid of railroads wholly within a state or territory to lands lying within the same state or territory.

The circuit court decided that the ordinary rule of construing railroad grants to roads lying within a state or territory is to confine the grant to such state or territory, notwithstanding the plain letter of the statute, and that such construction applies to the grant in question; and complainant's bill was dismissed with costs. O. Rec., 88–96.

The appellant assigns as error:

1st. The rulings of the circuit court in the opinion contained in the record (P. Rec., 88–94).

2d. The dismissal of the complainant's bill.

3d. The court erred in not granting the complainant the relief prayed for.

ARGUMENT.

I.

The lands in question are within the plain letter of the statute, and the principal question in the case is whether a supposed general policy, indefinite and not well settled, can be held to operate to defeat the plain and positive construc-

tion of the grant. The lands are inside the six-mile limits of the road as located and constructed. They are within lateral lines extending along the general direction of the road, and within lines at right angles to the located and constructed line at its westerly end. This is undoubtedly the true rule of construing railroad grants.

United States v. B. & Mo. River R. R. Co., 98 U. S., 324, 339.

The title of the complainant is clear. It is the equitable owner of the lands, and entitled to receive the legal estate by deed from the state of Minnesota. The lands were lands of the United States within six miles of the located line. Such line was located December 5, 1857, while the lands were still a part of Minnesota territory. The government surveys had not then extended to the Sioux Wood river, but the government surveyors marked the line of the road upon their surveys, and the secretary of the interior approved the original location after the government surveys had been made. O. Rec., 64.

Upon such location the grant took effect by relation as of the date of the act, and the title of the lands passed to the territory of Minnesota just as if they had been described in the act.

Schulenberg v. Harriman, 21 Wall., 44, 60–61.
Van Wyck v. Knevals, 106 U. S., 365.
Lawrence, Leavenworth & Galveston R. R. Co. v. United States, 97 U. S., 741.

The grant of March 3, 1857, and that of March 3, 1865, are plain and unequivocal as to what should pass under them, and no conjecture derived from supposed ideas of policy can be resorted to in order to restrict or narrow the grant. The road was located while the lands were still within Minnesota territory. It was completed within the time allowed by law. The grant of March 3, 1857, operated

"as a *law* as well as transfer of property, and has such force as the intent of the legislature requires."

Schulenberg v. Harriman, 21 Wall., 44, 62.
Van Wyck v. Knevals, 106 U. S., 360.

The cases above cited establish our title, which antedates the grant to the Northern Pacific Railroad Company by seven years. When the grant to that company was made the right to these lands had been for over six years in the state of Minnesota, and the claim of title of the defendant is utterly unfounded.

But it is claimed that the settled policy of the government has been to confine railroad land grants, made for railroads lying wholly within a given state or territory, to lands lying within the same state or territory; and that although the lands in question lie within what was the territory of Minnesota at the time the grant was made, yet that such policy must still be held to control the intent of Congress in the enactment of the act of 1857, so as to exclude lands which were afterwards included in the territory of Dakota, notwithstanding that the lands are within the plain letter of the statute.

The argument is, in substance, that the act making the grant cannot be given effect according to its terms, for the reason that a few days before its passage the act for the division of the territory of Minnesota and the formation of the state government had been passed, in which the Sioux Wood river was designated as a part of the western boundary of the proposed state. It is said that Congress must be deemed to have had the enabling act in mind when making the grant, and to have presumed that it would be acted upon and carried out at the earliest practicable moment, and therefore must have intended to confine the grant to lands within the limits of the contemplated state. This is claimed to be what Congress actually intended to do in

this particular case. It is not pretended, of course, that congress had not the power to extend the grant beyond such limits; indeed it seems to be conceded that, as to one of the roads mentioned in the act of 1857, Congress did actually extend the grant beyond the western boundary of the state, and that the grant has been adjusted and lands certified and patented under that construction.

We do not doubt that Congress had in mind the enabling act when this grant was made; for although the grantee named in the granting clause is the territory of Minnesota, it is in the same section declared that the lands granted "shall be held by the territory *or future state* of Minnesota, for the use and purpose aforesaid;" in the third section the lands are referred to as "the said lands hereby granted to the said territory *or future state;*" and the fourth section declares that "the land hereby granted to said territory *or future state* shall be disposed of by said territory *or future state* only."

It is obvious from this language that it was the intention of Congress that the grant should vest in and be administered by the territorial or a state government, according as the one or the other should exist at the time of or during its administration; and while there is perhaps no doubt that, had the proposition contained in the enabling act been rejected and a state government been formed only after another enabling act, and with enlarged or different boundaries, and even a different name, the grant would have vested in such state, yet, in view especially of the designation of the state in the act as the state of *Minnesota*, it is clear, we think, that the state then primarily in the mind of Congress was that provided for in the enabling act then just passed. But why the question whether the grant was intended to go to and be administered by the territorial or by a state government is important in determining the extent of the grant; or why the use of the words *or future*

state of Minnesota, in the act, should be held to limit the grant to lands within such contemplated state, or to qualify the plain language of the description in any respect, is not apparent. It is claimed that the point which was to form the western terminus of the complainant's railroad was to be on the western boundary of the proposed new state. Suppose it was! The westerly terminus of the line is not necessarily coincident with the westerly limit of the grant. Such might be the case, and doubtless would be if both the line of the road and the boundary line were straight and met at right angles; but such is not the case here, and the grant is of six sections in width on each side of the line, without regard to its course. But the claim is not well founded. The western terminus of the line as designated in the act of Congress is not necessarily on the western boundary of the proposed state. The designation is "*to a point between the foot of Big Stone lake and the mouth of the Sioux Wood river.*" Now the distance between the foot of Big Stone lake and the mouth of the Sioux Wood river in a direct line is not less than seventy miles, and that line is in some places not less than twenty miles east of the western boundary of the state, and in others is some distance west of that boundary — which between these points is emphatically sinuous as far as the river marks it, and thence southerly forms a great bend. So the western terminus of the line, in aid of which the grant was made, and as defined in the granting act, we submit was not necessarily on the western boundary of the proposed state, but might have been selected either east or west of that boundary, and in either case been strictly and literally within the limits allowed by the act.

The legislative assembly of the territory did, it is true, in the exercise of the discretion allowed by the act of Congress, locate such terminus at the boundary line, and upon the easterly side of the river; but this fact is entitled to no

consideration in determining the true construction of the grant, for, in the exercise of the same discretion, it was competent to locate it off that boundary and either east or west of it. As already stated, we are unable to see any reason why, conceding that congress intended the westerly terminus of the line to be within the limits of the contemplated state, the grant should be confined to lands within the same limits; but if the line in aid of which the grant was made was one which *might* terminate beyond those limits and still be strictly within the terms of the act making the grant, it is perfectly clear, we submit, that no limitation was intended or should be placed upon the grant.

Again, whatever the probabilities may have been, it was not certain, at the date of the grant, that any state would be formed in the then immediate future, nor pending the construction of the road and the administration of the grant, and of course Congress must be deemed to have had that uncertainty in mind; and that they did in fact have it in mind, and intend the act to meet that contingency, is abundantly evidenced by the language used: that the land shall be held by the territory *or* future state, and shall be disposed of by said territory *or* future state — language that can be given no significance unless it be that *if* no state government shall be formed the territory shall hold and administer the grant. The act was intended to meet either contingency, in one of which the question now made by the defendant's counsel could not have arisen, because there would have been no state boundary upon which to base it; and manifestly it could not have been the intention that the description should mean one thing should the grant be administered by the territory, and another should it be administered by the state.

Not only is there nothing in the act, nor in the situation, to justify the construction for which the defendant's coun-

sel contends, but, besides the plain and unequivocal language of the act, there is much against that construction. The lands designed to aid in the construction of the line to which our attention has been thus far confined form but a small portion of the munificent grant made by the act. The act defines three other lines and two branches, making really six lines in all, and makes one grant and only one for the entire system; and that is of "every alternate section of land designated by odd numbers for six sections in width on each side of each of said roads and branches." The lines too are all defined in the same section in which the grant, and the description of the lands granted, are contained.

The grant was a unit, and was in aid of a *system* of railroads extending in various directions over a certain portion of the territory of Minnesota. The system was, doubtless, intended to reach, and open to eastern markets, so much of the territory as had then become, or in the judgment of Congress was likely in the near future to become, to any considerable extent, settled. The portion of the territory which the various lines of this system would penetrate was made up largely, it is true, but not wholly, of the part which had been authorized to form a state government; but it does not follow that, because congress determined the limits of the proposed state and those of the railroad system to be so nearly the same, it was intended to make them identical. It was evidently the purpose of Congress in defining the boundaries of the proposed state to establish the western boundary as far as practicable upon natural monuments or objects — the Red river, the Sioux Wood river, and the lakes further south — and upon a straight or direct line where such monuments were not found; and the wisdom of such intent is obvious. But the considerations which render that mode of establishing the permanent boundaries of a state eminently wise have no force when applied to the

limitation of the railroad system or of the land grant made in aid of it; for while we may concede that the portion of the territory embraced within the limits of the proposed state — the southerly part of it, at least — was generally more thickly populated than the portion farther west, we cannot concede, and it is not to be presumed, that some portions lying west of the proposed state boundary had not then become more thickly populated than others lying to the east of it; and congress should have framed and evidently did intend this railroad system for the benefit of the people needing it, whether on one side or the other of the boundary line of the proposed state.

That such was the purpose of Congress, and that it was not the intention to confine the railroad system or the grant to the limits of the proposed state, is evident from the language of the act making the grant.

The act does not in terms so limit it. It is conceded that in the consideration and passage of this act Congress had the enabling act in mind. Such being the case, had the intention been to confine the system of railroads, or the grant in aid of it, to the limits of the proposed state, it would have been easy, and most natural, to have expressed in terms that intention; and the presumption is, in the absence of such expression, that there was no such intention. The boundaries of the proposed state are not once referred to in the act, nor is the state once mentioned, except as the government's trustee to hold and administer the grant in case a state government should be formed.

When Congress intended the terminus of any railroad line of the system to be at or upon a boundary line, it *was* so expressed. One line was to run from St. Paul and from St. Anthony to a junction west of the Mississippi, and thence "to the *southern boundary of the territory* of Minnesota, with a branch by way of Faribault to the *north line of the state of Iowa*, west of range sixteen."

One of the lines making up this system of railroads had its western terminus, as designated in the act, necessarily far west of the western boundary of the proposed state (O. Rec., 77); and while, of others, such terminus as so designated was nearer to such boundary, there is not one among them all, we submit, having a westerly general course whose route and westerly terminus might not, under the terms and provisions of the act, have been so located as that some portion of the line would have fallen to the west of such boundary. The fact that one line of the system was necessarily to extend beyond the westerly boundary of the proposed state, and that others might, is not consistent with the theory that either the lines or the grant were intended for the sole benefit, or to be confined to the limits, of such state; and the mention of the boundary of the territory as the terminus of one line of the system, and of the boundary of the state of Iowa as the terminus of another, not only renders it obvious that when a boundary line was intended as the terminus of a line of the railroad system it was so expressed, and that when not so expressed it was not so intended, but in connection with the omission to refer in any manner to the boundaries of the proposed state, makes it very clear that in prescribing the lines, and in making and defining the grant, those (*i. e.*, the *state*) boundaries were not in the least considered.

The grant, as we have said, was a unit, and it is submitted that the intention was that the lines should all share alike, and upon the same terms, the government bounty. The clause "every alternate section of land designated by odd numbers for six sections in width on each side of said roads and branches" was not intended to have one meaning as applied to one of the lines, and a different one as applied to another. If it was intended that one line should have the benefit of the grant throughout its entire length, it was so intended as to all; and if it was the intention to

limit the grant in aid of any one line to lands within the limits of the proposed state, we are wholly unable to see why such must not have been the intention as to all. It seems to be conceded, and is beyond question, that the grant covered the lands along the Winona and St. Peter line throughout its entire length, *i. e.*, to the Big Sioux river — some twenty or thirty miles west of the state boundary, and it has been so construed by the government. Now, if the grant in this instance reaches lands beyond the westerly boundary of the proposed state, it is only because the language of the description embraces all the lands within certain limits along the entire line; and if there is any reason why the same language should receive a construction less comprehensive when applied to any other line in aid of which it was made, it has not been disclosed, and we confess ourselves unable to see it.

To us the meaning of the act is plain. The territory from which the grant is to be filled is limited only to the public lands of the United States in sections designated by odd numbers and lying within six miles on either side of each of said roads and branches; and in ascertaining and determining such limits or the quantity of land embraced in the grant, neither the Sioux Wood river nor the western boundary line of the proposed state figures any more, or is any more to be considered, than any other river, or any other real or imaginary line, intersecting the grant.

The cases cited by the learned counsel to his position on this branch of the case do not, as we contend, afford it the slightest support. Indeed, the similarity of either to the case in hand is not apparent. Here, it is to be borne in mind, the government was dealing alone with, and the grant was directly to, the territory of Minnesota, within whose borders the lands in question and all the designated railroad lines were situated, and whose governmental jurisdiction extended over and beyond them all; — in each of

which respects the cases cited present an entirely different situation.

The act making the grants in aid of the Illinois Central Railroad, and its continuation to the city of Mobile, contains:

A grant of lands to the state of Illinois to aid in the construction of the line within the territorial limits of that state, with the right of way through the public lands within the same limits, followed by provisions — in sections 2, 3, 4, 5 and 6 — declaring the terms, limitations and restrictions of the grant; among them "that the said lands hereby granted to the said state shall be subject to the disposal of the legislature thereof for the purposes aforesaid, and no other;" and then follows the seventh and last section, which is as follows:

"*And be it further enacted*, That in order to aid in the continuation of said Central Railroad from the mouth of the Ohio river to the city of Mobile, all the rights, privileges and liabilities hereinbefore conferred on the state of Illinois shall be granted to the states of Alabama and Mississippi respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio river, and that public lands of the United States, to the same extent in proportion to the length of the road, on the same terms, limitations and restrictions in every respect, shall be and is hereby granted to the states of Alabama and Mississippi respectively."

1 Lester's Land Laws, pages 160 and 161.

The decision of the attorney-general is to the effect that here were three several grants, of both lands and the right of way, one to the state of Illinois, one to the state of Alabama and one to the state of Mississippi; that the same terms, conditions, restrictions and limitations which are expressed in connection with the grant to Illinois are by the language of the seventh section made applicable to each of the other grants, and that the result of such application is to confine each grant to the portion of the line within the territorial limits of the grantee state.

Portions of the attorney-general's opinion are the following:

"The seventh section of the statute contains a several grant to the state of Alabama and a several grant to the state of Mississippi, not a grant jointly to the two. The word 'respectively' makes the severalty without doubt."

"The statute, with its seven sections, is in meaning, spirit and effect the same as if three several and distinct grants had been made by three separate and distinct statutes, the one to the state of Illinois, the second to the state of Alabama, and the third to the state of Mississippi, with the restrictions, conditions, limitations, forfeitures and privileges expressed in the first six sections. The meaning and intention of the legislature, as contained in the seven sections of the act, will be expressed and clearly understood by taking the first six sections containing the grants to the state of Illinois, and applying them, *mutatis mutandis*, first to the state of Alabama, and then to the state of Mississippi, so as to make three distinct statutes, one in favor of Illinois, another in favor of Alabama and the third in favor of Mississippi.

"The grant to the state of Alabama is of the right of way over the public lands in that state, and of the sections of lands on each side of the railroad in that state; the grant to the state of Mississippi is of the right of way over the public lands in that state and of the sections of lands on each side of the railroad in that state, *according to the description of sections of land contained in the second section, and subject to the provisos and conditions of the several sections of the statute.* . . .

"The words 'in proportion to the length of the road' must be understood in reference to 'the length of the road' in the respective states of Alabama and Mississippi.

"That was the measure of the grant to Illinois, and the seventh section is express that the same 'rights, privileges,' etc., granted to Illinois were those alone intended to be granted to Alabama and Mississippi. To give to those words a different construction, to understand them as embracing the entire line from Mobile to the Ohio river, would lead to inexplicable difficulties, and to consequences irreconcilable with the plain provisions of the act."

1 Lester's Land Laws, pp. 516–520.

What bearing, direct or remote, this opinion has upon the case at bar, where the grant is of every alternate section,

etc., within six miles of the line, and the entire line, as well as the entire grant claimed, is within the limits of the territory with which the government was dealing and to which the grant was made, it is not easy to see.

The decision of the Secretary of the Interior in the Florida-Alabama case is, as we submit, equally innocent of any bearing upon that in hand. By the act giving rise to that contest a grant was made to the state of Florida to aid in the construction of a railroad from Pensacola to the state line of Alabama, in the direction of Montgomery, of every alternate section of land designated by odd numbers for six sections in width on each side of said road, with the usual provision for making up deficiencies, by selections "from the lands of the United States nearest to the tiers of sections above specified" and within fifteen miles of the line of the road, and with the usual terms, conditions and limitations; and by the sixth and last section it was provided as follows:

"*And be it further enacted*, That a similar grant of alternate sections of public land is hereby made to the state of Alabama to aid in the construction of a railroad from Montgomery, in said state, to the boundary line between Florida and Alabama in the direction of Pensacola, and to connect with the road from Pensacola to said line, upon the same terms and conditions in all respects as are hereinbefore prescribed for the grant to Florida."

1 Lester's Land Laws, pp. 259–261.

The state of Alabama, by her agent, claimed the right in making up her deficiencies to select lands within that state — *i. e.*, the state of Alabama — lying, not within the fifteen-mile limits of her own road, but within the fifteen-mile limits of the Florida road — on the ground, or by reason of the fact, that the grant to Florida was by the same act of Congress. The Secretary had already had occasion to construe this act of Congress, at the instance of the state of Florida, and in his decision had referred to, and followed as far as applicable, the opinion of the attorney-gen-

eral in the Alabama and Mississippi case. We quote from that decision:

"The first section of the act of Congress referred to makes a grant of land to the state of Florida to aid in the construction of a railroad 'from Pensacola to the state line of Alabama in the direction of Montgomery.'

"The sixth section of the same act makes a distinct though similar grant to the state of Alabama to aid in the construction of a railroad from Montgomery, in said state, to the boundary line between Florida and Alabama in the direction of Pensacola, and to connect with the road from Pensacola to said line.

"The terms and conditions of the two grants are similar in all respects, excepting that an obligation is imposed on Alabama to have the road, in aid of which a grant is made to her, connect with the road from Pensacola.

"On a comparison of the title and provisions of this act of May 17, 1856, with the title and provisions of the act of September 20, 1850, under which certain questions which arose were referred to Attorney-General Crittenden, the opinion given by him on the 7th of August, 1852, appears to be strictly applicable to the questions in this case.

"Quoting then his words (the names of the states only being changed), 'The whole length of the railroad through and within the state of Florida, when actually surveyed and definitely located within that state, must determine, limit and define the extent of the grant to that state. And so, likewise, the whole extent of the railroad within the state of Alabama, as surveyed and definitely fixed, must determine the extent of the grant to that state.'

"Neither of said states can select more land than has been granted to her, on account of the specific road, or part of a road, within her limits. . . .

"The location of the roads on account of which the several grants are made, thus determines the extent of the grant, the location of the grant, and the location of the bodies of land nearest to the tiers of granted sections, from which each state may respectively select to the extent of the grant to her."

1 Lester's Land Laws, pp. 526–27.

The real gist of that part of the opinion relied on by the defendant is expressed in the third paragraph, as follows:

"The location of said road within Alabama determines

the extent and location of the grant of lands to that state. The grant is in width along the line of the road, and the selecting limits lie laterally adjacent to the granted lands."

Had these lands been claimed by the state of Florida upon a showing that, although lying in the state of Alabama, they were within the six-mile lateral limits of her line, or within the fifteen-mile limits and laterally adjacent to the lands in place, and necessary to make up the full quantity of her grant, the case would have been more nearly like our own; but the only point that could be made against the claim in that case, even upon the theory of the defendant's counsel, that the lands were not within the state to which the grant was made, is wanting in our case; for here, as we have seen, the lands claimed were at the time of the grant within the territory to which the grant was made.

Not only is there nothing whatever in either of these authorities in conflict with our position, but both, we submit, if they can be held to apply, and so far as applicable, are in support of it; for in both, all these grants are interpreted to mean *all* the lands not sold, etc., for a certain width along the line of road in aid of which it is made, with the right of indemnity for those sold, etc., by selection from the lands nearest to the granted lands and lying within certain broader limits laterally adjacent to the granted lands. This means, of course, along the entire length of the line of road, and there is not an intimation by either the attorney-general or the secretary in either case that the grant may be satisfied by anything less, nor that its intersection by a state line should operate to limit it to any extent, or have any effect whatever upon it.

Nor is there, as we contend, any "settled policy" whatever established by these cases. The decisions themselves announce no such policy. They follow the usual rule of interpretation — they turn wholly on the language of the

acts themselves, and not on any extrinsic rules of interpretation. The attorney-general and the secretary simply construe the language used in the two acts, and neither lay down any general policy of construing acts like these, nor do they in any way establish any such policy or rule of construction.

The question is whether Congress, in passing the act of 1857, could have had in mind any such general and emphatic rule of construction as to overcome the natural force of the plain and clear language of the act. The lands in question are within the letter of the act. They are within its reason and spirit. The power to grant them is conceded. Nothing interferes with their passing by the act except an alleged or supposed policy, which, we submit, is not clear, is inapplicable to the case, and will not bear the test of examination. We believe that these opinions wholly fail to sustain the defendant's theory of a "uniform and settled policy" of construction of such land grant acts as the one in question.

The question here presented arose in the case of *Denny v. Dodson*, 32 Fed. Rep., 899, 910, in the circuit court for the district of Oregon. In that case the plaintiff brought ejectment for lands *in Oregon*, lying within the twenty-mile or place limits of the grant to the Northern Pacific R. R. Co., *the located line of the road being in Washington territory*, near the boundary line between Oregon and Washington territory. The court, per MR. JUSTICE FIELD, say:

"In the brief of counsel argument is presented as to the lateral extent of the grant, the road passing through the territory of Washington, and, as represented, being located near the boundary line of Oregon. There is nothing in the complaint which indicates the distance between the line of the road and the premises in controversy. Its allegation is that the plaintiff derives title to them through the grant to the Northern Pacific Railroad Company, and that they are opposite to the route of the road as definitely fixed.

These allegations may be taken as equivalent to direct averment that the premises are covered by the grant. But, independently of this consideration, there does not appear to be any serious question as to the lateral limits of the grant. The act of Congress makes that depend upon the location of the road, whether in a territory or in a state. If in the former the grant has twice the extent that it has when located in the latter. It is the place of location which determines this matter.

"The nearness of the line to any other territory or state has nothing to do with it. Such, we understand, has been the uniform ruling of the land department, and that mode of determining the lateral extent of the grant is the only practicable one."

II.

It is claimed by the defendant that the westerly terminus of the definite location of the line of road in question is not at Breckenridge, but is at a point some six miles further south; and that, therefore, even if our construction of the grant be correct, the lands in question do not fall within it.

The argument, as we understand it, is to the effect that the grant provides that the line of railroad shall terminate at a point on the western boundary of the present state, and that the line was located by the first map filed to the point in question, and could not, after having reached the Sioux Wood river, turn northward and run along that river to Breckenridge. But the theory that the grant provides that the line shall terminate at a point on the western boundary of the present state is, as we contend, erroneous. The act does not provide that the line shall terminate on the western boundary of the state, nor in any way or manner refer to such boundary; and were it otherwise it would not follow that the line must terminate at the nearest point to be reached, nor at the first point approached, but only at some point on the boundary between the foot of Big Stone lake and the mouth of Sioux Wood river.

The territorial legislature had power to select the point between such places anywhere within the limits prescribed which should be the terminus of the road, and that body, only a few weeks afterwards, by the act of May 27, 1857, designated the town of Breckenridge as the point to which the line should run. O. Rec., 2; P. Rec., 3. During the same year the line was definitely located to the same point, and a map thereof filed as required by law and accepted by the Secretary of the Interior as the line of definite location, and upon that line and to that point the road was in fact constructed and has ever since been operated. The land grant has been adjusted upon the theory that Breckenridge was the terminus of the line, and the Secretary of the Interior has certified to the company all the odd-numbered sections lying within six miles of the line clear up to the terminus at Breckenridge on the easterly side, and all lying between it and the Sioux Wood river on the west to the same point. The original map of definite location filed in 1857 was not accepted by the secretary of the interior so far as the public lands had not been surveyed; only about one-half of the line was accepted by him as having been definitely located. This map, therefore, settled nothing as to the westerly terminus of the line, but subsequently, after the public surveys had extended throughout the country penetrated by the line, another map was filed showing the definite location of the entire line to Breckenridge, and its connection with or relation to the lines of the public surveys, and that map was received and accepted by the secretary as the line of definite location of the road, and is the only map ever so accepted of the westerly portion of the line. O. Rec., 70. See, also, maps on file.

As to the effect of such filing and acceptance it is sufficient to cite the case of *Van Wyck v. Knevals*, 106 U. S., 360, 366, where it is said:

"The route must be considered as definitely fixed when

it has ceased to be the subject of change at the volition of the company. Until the map is filed with the Secretary of the Interior, the company is at liberty to adopt such a route as it may deem best after an examination of the ground has disclosed the feasibility and advantages of different lines. But when a route is adopted by the company and a map designating it is filed with the Secretary of the Interior and accepted by that officer, the route is established.'

The first map filed does not show the town or village of Breckenridge at all. See the map on file.

This action of the Secretary was not only in accordance with the uniform practice of the department in like cases, but so obviously legal and proper that we refer to only one decision to the point, and quote from that but a single passage. The case referred to arose under the grant to the state of Wisconsin in aid of the St. Paul & Fond du Lac Railroad, wherein the commissioner had accepted a map of the line extending through both surveyed and unsurveyed lands, and the Secretary in his decision, addressed to the commissioners, says of his action:

"When you accepted the map, December 3, 1857, the townships through which the proposed road is to pass had been surveyed only as far north as the north line of township thirty. Your acceptance can be regarded as the date of the vestiture of the title to the odd-numbered sections thereby determined to lie within the granting limits of the line of location from near the west end of Lake Shawano in section 29 of township 27, range 16, to the north line of township 30 north of range 15 east; but the acceptance must be regarded as merely preliminary for that part of the proposed line of road which extended through lands unsurveyed, and townships not subdivided. The marking on a general map of the region of country, the line of a preliminary survey of route through an unsurveyed region, can show only the relation of the proposed route to great natural objects, which may or may not be properly laid down on the map. Nothing is thereby 'definitely fixed.'

* * * * * * *

"It will be necessary for the state, after the public surveys are made, to cause to be prepared and filed in your

office, . . . maps showing the connection of that part of their route with the lines of the public surveys, which, when accepted by you as correct, may be regarded as determining and definitely fixing that part of the route, and the limits thereto conjoined within which lands are granted in place, and reserved to the United States to be sold at the enhanced price."

[1] Lester's Land Laws, pp. 537–8.

Upon the law as it is thus settled, there would seem to be no doubt that the line was definitely located to terminate at Breckenridge, and that the lands in question are, therefore, within the primary limits of the grant.

III.

The contention that the lands in question were within what is called the Indian territory at the date of the grant under which the complainant claims, and that therefore no title to them passed to the territory or state of Minnesota, is not well founded.

The act under which the complainant claims the lands in question is in the usual form of land grant acts, but it contains some provisions not found in others, to make it applicable to the condition of affairs in what was then Minnesota territory, the Indian title to a very great part of which had not then been extinguished. The third proviso of the first section of this act protects Indian reservations from the operation of the grant; but the sixth section makes it applicable to lands "within any Indian territory," and declares "that no title to the same shall accrue, nor shall the same be entered upon by the authority of said territory or state, until the Indian title to the same shall be extinguished." The entire sixth section is devoted to this question. 11 Stat., 196.

Without this provision, it may be conceded that under

the decision in *Lawrence, Leavenworth & Galveston R. R. v. The United States*, 92 U. S., 733, 741–748, these lands would not have passed to the territory or state of Minnesota for the use of or in trust for the complainant company; but the entire purpose of section 6 of the act, which reads as follows: "Sec. 6. *And be it further enacted*, That in case any of the lands on the line of said roads or branches are within any Indian territory, no title to the same shall accrue, nor shall the same be entered upon by the authority of said territory or state until the Indian title to the same shall have been extinguished," is to make the grant operate on such lands when the Indian title should be extinguished.

We may concede that it requires, as said in the case just cited, "words of unmistakable import" in order that the grant should act or operate either upon lands in an Indian reservation or in Indian territory, but we have them in the grant upon which we rely. Section 6, above quoted.

In the *Lawrence, Leavenworth & Galveston R. R.* case above cited, the question was, whether words of *general* grant would operate on lands in an Indian reservation created by treaty stipulation; and the court say, 92 U. S., 743: "The grant is silent as to such a purpose; but if it was to take effect in the Osage county, *on the surrender of the Indian title*, it would have so declared."

In this case we have such declaration.

Now the defendant's contention amounts to this: that the grant *with* section 6 amounts to no more than it would if section 6 *had been entirely omitted;* in other words, that section 6 *serves no purpose whatever, and has no operation or effect. This view is not sound.*

The grant as to land in the Indian territory gave the territory or state of Minnesota a contingent remainder, or what was equivalent to it, to vest and come into enjoyment when the Indian title should be extinguished.

"A legislative grant operates as a *law* as well as a trans-

fer of property, and has such force as the intent of the legislature requires."

Schulenberg v. Harriman, 21 Wall., 44, 62.
Van Wyck v. Knevals, 106 U. S., 360.

When the line of the road was definitely located, and the Indian title was extinguished, the title to the lands passed to the state of Minnesota, as of the date of the grant, the Indian title being one of occupancy only, and the fee being at the date of the grant in the United States.

Missouri, Kansas & Texas Railway Co. v. Kansas Pacific Railway Co., 97 U. S., 491, 496–498.
Van Wyck v. Knevals, 106 U. S., 360.
United States v. Cook, 19 Wall., 593.

Besides, the grant to the Northern Pacific Company was only of such lands on its line to which "the United States have *full title not reserved, sold, granted or otherwise appropriated*, and free from pre-emption *or other claims or rights at the time the line of said road is definitely fixed and plat thereof filed* in the office of the commissioner of the general land office." Act of Congress, July 2, 1864, sec. 3; 13 Stat., 395; 16 Stat., 378; Resolution of May 31, 1870.

These lands are not within the primary limits of the grant, in place, to the Northern Pacific Company, but within the indemnity limits of its grant. This is stated in the bill and not denied. No title passed to these lands to the Northern Pacific Company for the reasons already stated, but none could pass in any event until they were selected by it.

Cedar Rapids & Missouri River R. R. v. Herring, 110 U. S., 27, 39–41.

The Northern Pacific Railroad Company did not acquire any right to select lands as indemnity until its road was fully and definitely located from one terminus to the other,

as shown by the *Herring case*, *supra*, and its road was not so located until after this suit was commenced.

And before any such selection was made the lands were taken by the grant in place to the territory or state of Minnesota, under which the complainant claims. It has the full beneficial title. The state holds the legal title for it in trust, and the court will protect this equitable title on a bill filed by the complainant for that purpose. *Van Wyck v. Knevals*, 106 U. S., 370.

When the Indian title of mere occupancy was extinguished, the fee being in the United States (*United States v. Cook*, 19 Wall., 593), the full title at once vested in the state of Minnesota for the uses and purposes mentioned in the act of March 3, 1857, and as of that date.

The lands would not go to the Northern Pacific Company because the grant to that company was only of such lands on its line to which "the United States have *full* title, not reserved, sold, *granted* or otherwise appropriated, and free from pre-emption *or other claims or rights, at the time the line of said road is definitely fixed and a plat thereof* filed in the office of the commissioner of the general land office." Act of Congress, July 2, 1864, sec. 3; 13 Stat., 365; 16 Stat., 378; Resolution of May 31, 1870.

The obligation of the United States to extinguish the Indian title for the benefit of the Northern Pacific Company operated only on lands *which came within the grant to that company*, and not on lands excluded from it by the reservations and limitations in that grant. See case of *Missouri, Kansas & Texas Railway Co. v. Kansas Pacific Railway Co.*, 97 U. S., 497, and particularly 498. These lands were, by the terms of the granting act to the Northern Pacific Company, excluded from its operation, and the extinguishment of the Indian title to them operated in favor of the state of Minnesota for the use of the St. Paul & Pacific Company, under whom we claim as its assignee or

grantee, in favor of the elder, and not in favor of the junior, grant, and would have so operated had there been no such words of reservation and limitation. Nor is there anything in the case of *The Northern Pacific Railroad Co. v. Majors*, 5 Montana, 111, in conflict with this view.

The provision in the grant of the Northern Pacific Railroad Company is that:

"The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the said Indians, the Indian titles to all lands *falling under the operation of this act, and acquired in the donation* to the road named in this bill." Act of July 2, 1864, sec. 2.

The court cannot, upon the act granting lands to the Northern Pacific Company, impute to Congress an intention to impair or take away in any degree the grant of lands set apart for the state of Minnesota seven years before, even had it the constitutional power to do so, which clearly it had not.

Section 6 of the act of March 3, 1857, under which we claim, was a covenant on the part of the United States that the state of Minnesota should have these lands when the Indian title should be extinguished, and took precedence of any claim on the part of the Northern Pacific Company to the same lands for reasons already stated.

The complainant's title rests upon a positive grant from the state of Minnesota as well as on the foreclosure of the trust deeds set out in the bill by which the land grant to Minnesota pursuant to its legislation had been incumbered.

The mortgage or trust deed was expressly authorized by the legislature of Minnesota, while the lands lay in Minnesota. O. Rec., 3. The powers granted the Minnesota & Pacific Railroad Company by act of May 22, 1857, were continued to and made a part of the powers and franchises of the St. Paul & Pacific and St. Paul & Pacific, First Division, companies. O. Rec., 7. There can be no doubt of

the validity of our title as thus derived under the foreclosure and the act of March 7, 1881. O. Rec., 21.

The confirmatory act of March 7, 1881, is as follows:

"That the purchases made by the Saint Paul, Minneapolis & Manitoba Railway Company, and hereinafter in this section mentioned, as evidenced by the several instruments of conveyance and transfer duly entered and now remaining of record in the office of the secretary of state of this state, to wit:

* * * * * * *

"Fifth. The several purchases so made of the main and branch lines (so called) formerly owned by the First Division of the Saint Paul & Pacific Railroad Company and of the extension line (so called) extending from East Saint Cloud to Saint Vincent and the international boundary line, formerly owned by the Saint Paul & Pacific Railroad Company, with the equipments, land grants, lands, property, benefits, privileges, immunities and corporate and other franchises and powers pertaining to said main, branch and extension lines respectively —

"Be, and they, as well as the said several instruments of conveyance and transfer and the organization of said The Saint Paul, Minneapolis & Manitoba Railway Company, are fully ratified and confirmed."

But the doctrine of the often cited and much misunderstood case of *Farnsworth v. Railway Company*, 92 U. S., 65, is relied on to show that the mortgage or trust deed made in advance of constructed road was inoperative; and so it would be if, as in that case, the company making it *never built any road*, but if the company built the road it became binding and operative by way of estoppel, as explained and held in just such a case. *Tucker v. Ferguson*, 22 Wall., 527, 572, 573.

But if there was any infirmity in complainant's title by reason of a supposed want of power on the part of the railroad company under which we claim to mortgage them, then it is clear that the confirmation subsequent to the completion of the road by the state having the legal title by the act of March 7, 1881, *supra*, heals it.

IV.

But it is claimed that the Secretary of the Interior, in the adjustment of this grant, has always declined to certify or convey to the territory or state of Minnesota any lands lying westward of the Bois des Sioux river, for the alleged reason that the limits of such grant do not by law extend westward of the eastern branch of that stream, and no land lying westward of that stream has ever been certified or conveyed to the said territory or state on account of the said railroad.

The answer to this contention is that no conveyance or certification was necessary. The title vested in the territory and state by force of the act of Congress upon the location of the road and the extinguishment of the Indian title.

The refusal of the Secretary to convey or certify these lands could not defeat or prejudice the grant, however much it might embarrass the company.

Van Wyck v. Knevals, 106 U. S., 367.

Assuming, therefore, that the lands in question are within six miles of the definite line of location of the main line to Breckenridge, and south of a line drawn at right angles with the general course of the road opposite the lands, as the proofs show, then the complainant is entitled to the relief prayed in its bill.

It is submitted that the decree of the circuit court should be reversed.

S. U. PINNEY,

Counsel for Appellant.

Supreme Court of the United States.

OCTOBER TERM.

No. 26.

THE ST. PAUL, MINNEAPOLIS and MANITOBA RAILWAY COMPANY, Appellant,

vs.

RANSOM PHELPS, Appellee.

Appeal from the Circuit Court of the United States for the District of Minnesota.

BRIEF AND ARGUMENT ON BEHALF OF APPELLEE.

JAMES McNAUGHT,
A. H. GARLAND,
H. J. MAY,
Of Counsel for Appellee.

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I.

It has been the uniform and settled policy of the Government to confine land grants, made in aid of the construction of railroads lying wholly within a given State or Territory, to lands lying within the same State or Territory. This construction was put upon the very earliest grants by the Interior and Law Departments; and it is confidently believed never to have been departed from in the adjustment of any grant. This question arose with respect to the very first grant made by Congress in aid of the construction of a railroad.

The act of September 20, 1850, *9 U. S. Statutes at Large, pp. 466, 467*, by its first section, granted a right of way

through the public lands to the State of Illinois, for the construction of a railroad from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi Rivers, with a branch of the same to Chicago, and another *via* the town of Galena, Illinois, to Dubuque in the State of Iowa. By the second section, for the purpose of aiding the construction of such railroad and branches, the act granted to the State of Illinois every alternate section of land designated by even numbers for six sections in width on each side of such road and branches.

The seventh section of the act was in the following terms:

"*And be it further enacted*, That in order to aid in the continuation of said Central Railroad from the mouth of the Ohio River to the city of Mobile, all the rights, privileges, and liabilities hereinbefore conferred on the State of Illinois shall be granted to the States of Alabama and Mississippi, respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio River, and that public lands of the United States, to the same extent in proportion to the length of the road, on the same terms, limitations, and restrictions in every respect, shall be, and is hereby, granted to said States of Alabama and Mississippi, respectively."

According, therefore, to the literal reading of the act, there was granted to the States of Alabama and Mississippi, respectively:

Firstly—A right of way through the public lands for a railroad extending from Cairo, Illinois, through the States of Kentucky and Tennessee, as well as Mississippi and Alabama, to the city of Mobile.

Secondly—A grant of lands to the extent of six sections per mile, throughout the entire length of the road south of the Ohio River, with right to usual indemnity for lands lost within the primary limits, to the lateral dis-

tance of 15 miles on either side of the line of roadbed. Hence, although no public lands might have been available within the States of Kentucky and Tennessee, there was nothing in the nature of things to prevent the States of Mississippi and Alabama from satisfying, out of the public lands lying within their own boundaries, a grant for the full length of the line of road.

It is perfectly natural, therefore, that the question should immediately arise in the adjustment of the grant, whether, notwithstanding the broad terms of the act, there was really granted to the States of Mississippi and Alabama any lands to aid in the construction of that part of the railroad extending through the States of Kentucky and Tennessee; for the language of the seventh section, upon its face, was entirely adequate to include lands for that part of the road, as well as for the remainder, lying within the two States mentioned as grantees. But it was held, after careful consideration by the Attorney-General, that the grant was to be treated as a several grant to each of the grantee States respectively; and that each of them took only right of way and lands for that portion of the line lying within its own limits; and that neither of them took any grant whatever for that portion of the road lying within the States of Kentucky and Tennessee.

The opinion of the Attorney-General deciding this point bears date August 7, 1852, and is printed in 1 Lester's Land Laws, pp. 516–520.

The following extracts from the opinion embody the substance of its declarations upon the subject now under examination:

"You state that under the seventh section of the statute, the States of Alabama and Mississippi claim a quantity of land equal to the one-half of six sections in width on each side of said road, throughout its entire length, from Mobile to the Ohio River, to be taken wherever found

in those States, within fifteen miles on each side of the road. * * *

"The claim to the quantity of land, equal to the one-half of six sections in width on each side of the road, in its whole length from Mobile to the Ohio River, seems to be inadmissible. It supposes a joint grant and a joint property in the lands granted to the States of Alabama and Mississippi. Such a construction would run into perplexed and unreasonable consequences. * * * Although the railroad must pass through the States of Kentucky and Tennessee, in its course from the city of Mobile to the mouth of the Ohio River, the statute has not mentioned either of those States, and there is no indication of any intention on the part of the Congress of the United States, to grant to the States of Alabama and Mississippi, or to either, a right of way through the States of Kentucky and Tennessee, or a right to survey and locate definitely a road through them; nor to give to the legislature of Alabama an authority to survey and locate, construct and superintend a road through the territory of the State of Mississippi; nor to the State or Mississippi an authority to survey, locate, construct and superintend a road through the territory of the State of Alabama. The mere description given in the statute of the contemplated Central Railroad, from the mouth of the Ohio River to the city of Mobile, confers no such powers or rights to the one State to operate within the territorial limits of any other State; no such confusion of jurisdiction is intimated by anything contained in the statute. In all these particulars, the States through which the road shall pass are left free to adopt such measures as they may respectively think proper, and make all such arrangements as may be necessary for their mutual convenience and co-operation.

"The whole length of the railroad, through and within the State of Alabama, when actually surveyed and definitely located within that State, under the direction of the legislature thereof, must determine, and limit, and define the extent of the grant to that State. And so likewise, the whole extent of the railroad within the State of Mississippi, as surveyed and definitely fixed under the direction of the legislature thereof, must determine, limit, and define the extent of the grant to that State."

The construction thus put upon the grant was so manifestly correct, that it was acquiesced in by all parties in interest; and no question of its correctness has ever since been raised.

A few years later, a similar question, in principle, arose, and was decided by the Secretary of the Interior in the same way.

By an act approved May 17, 1856, entitled "An act granting public lands in alternate sections to the States of Florida and Alabama, to aid in the construction of certain railroads in said States," 11 U. S. Statutes at Large, pp. 15, 16, there was granted to the State of Florida, for the purpose of aiding in the construction of, among other railroads, one extending from Pensacola to the State line of Alabama, in the direction of Montgomery, every alternate section of land designated by odd numbers for six sections in width on each side of the road, with the usual indemnity provisions. By the last section of that act, a similar grant of alternate sections of public lands was made to the State of Alabama, to aid in the construction of a railroad from Montgomery, in that State, to the boundary line between Florida and Alabama, in the direction of Pensacola, to connect with the road from Pensacola to said line, upon the same terms and conditions as prescribed for the grant to the State of Florida. The inter-State road thus aided cut the boundary line between the two sections diagonally; so that the land grant limits of that part of the line situated within the State of Alabama would extend across the line into the State of Florida, and *vice versa*. The State of Alabama, in view of the language of the act, which was quite broad enough, when taken literally, to sustain the pretension, claimed the right to select, within its own boundaries, lands thus lying between the six and fifteen-mile limits of that part of the road within the State of Florida. This claim, however, was overruled

by the opinion of the Secretary of the Interior, under date of June 14, 1858, and printed in 1 Lester's Land Laws, pp. 529, 530. As the opinion is short, it is quoted below at length:

"DEPARTMENT OF THE INTERIOR,
WASHINGTON, *June* 14, 1858.

"SIR: Your report of the 2d instant presents, for my consideration, a question arising in the matter of the selection of lands enuring to the State of Alabama, under the provisions of the act of Congress of May 17, 1856, 'granting public lands, in alternate sections, in the States of Florida and Alabama, to aid in the construction of certain railroads in said States.'

"In behalf of the State of Alabama, her agent claims the right to select lands within that State, which lie between the six and fifteen-mile limits of the route of the road which has been located within the State of Florida, in view of the grant to the latter State by the same act of Congress.

"I regard the grants made to the two States as distinct and several. The grant to Alabama is, to aid in the construction of a railroad 'from Montgomery, in said State, to the boundary line between Florida and Alabama, in the direction of Pensacola,' etc. The location of said road within Alabama determines the extent and location of the grant of lands to that State. The grant is in width along the line of the road, and the selecting limits lie laterally adjacent to the granted lands.

"These views, it is understood, when applied to the line of railroad from Montgomery to the boundary line between Alabama and Florida, sustain your decision adverse to the special claim of the State agent, which has been presented for my consideration.

"I now return, to your office, the papers which accompanied your report.

"Very respectfully, your obedient servant,
"J. THOMPSON, *Secretary.*

"Commissioner of the General Land Office."

The two cases above quoted from comprise the entire list of recorded decisions by any Department of the Gov-

ernment upon the subject therein discussed. These opinions, coming early in the history of such grants, had the effect of giving a settled construction to them, namely, that it is not the intent of Congress, in making a grant to a State or Territory to aid in the construction of a railroad lying wholly within the boundaries of the grantee, to permit the limits of the grant to overlap the boundary line and go into an adjacent State or Territory.

This construction, it may be confidently asserted, has never been departed from in any instance; although nearly every grant, from the beginning, which has been made to the several States and Territories, has been for the construction of a railroad touching one or more of the boundaries of the grantee. Of course, in practice, none of these lines have been so located as to approach the State or Territorial boundary at a precise right angle; so that, executing these grants according to their literal terms, probably not a single grant has yet been made to a State or Territory where the grantee would not have been authorized to cross its boundary, and take lands upon the other side. But no such right has ever been accorded; and, probably, since the two cases ruled upon respectively by the Attorney-General and the Secretary of the Interior, no claim of the kind has ever been set up, until that one now before the Court. Even in this very case, as shown by the stipulation between the parties, the Land Department of the Government has always declined to recognize any such claim; and, in carrying out the grant, that Department has always confined the Territory and State to lands lying on the easterly side of its western boundary.

It must be assumed, in construing such grants, that Congress has constantly kept itself familiar with the construction put upon the same by the administrative branch of the Government. Hence, it must be further assumed that Congress has always known that in the

adjustment of such grants claims of the character set up in this suit have never been allowed. It must, therefore, be still further assumed that the construction referred to is the very one which Congress designed its grants to bear.

Applying that construction to the grant of March 3, 1857, to Minnesota Territory, it cannot but be seen that the line of complainant's grant stopped at the Bois des Sioux River.

The whole question is one of Congressional intent. The language of Congress, in making the grants to aid this line of road, was—

"That there be, and is hereby, granted to the Territory of Minnesota, for the purpose of aiding in the construction of railroads, from Stillwater by way of Saint Paul and Saint Anthony, 'to a point *between the foot of Big Stone Lake and the mouth of Sioux Wood River.*'"

Why a point between the foot of Big Stone Lake and the mouth of Sioux Wood River? This inquiry can readily be answered, and its answer disposes of plaintiff's claim.

At the time of the passage of this granting act, the Missouri River formed the western boundary of the Territory of Minnesota; but, for some time previously, it had been purposed by Congress and desired by the inhabitants of the Territory, all of whom then resided along its eastern boundary, that the Territory should be divided, and the eastwardly portion thereof admitted as a State, at the earliest convenient date. To this end an act authorizing the formation of a State government had been passed by Congress, and been approved by the Executive on February 26, 1857—about one week prior to the approval of the act making this land grant.

11 U. S. Stats. at Large, 166.

By this enabling act the western boundary of the

proposed new State of Minnesota was designated as follows:

"Beginning at the point in the centre of the main channel of the Red River of the North, where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux River; thence [up] the main channel of said river to Lake Traverse; thence up the center of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone Lake; thence through its center to its outlet; thence by a due south line to the north line of the State of Iowa."

It thus appears that the "point" which was to form the western terminus of the complainant's railroad was to be one on the western boundary of the proposed new State. Congress evidently stopped the line of the grant at the Bois des Sioux River, for the very reason that it would form the boundary line of the new State, in whose hands the execution of the trust created by the grant was certain to fall. It was undoubtedly presumed by Congress, when this grant was made, that the act just passed providing for a State government would be carried out, as in fact it was, at the earliest practicable moment. And hence the act is to be construed precisely as if it had read "to a point on the western boundary line of the new State of Minnesota, between the foot of Big Stone Lake and the mouth of the Sioux Wood River."

Read in this way, there could not be any doubt, for a moment, as to how the grant should be construed. The same act made grants for other roads within the Territory—one from the eastern boundary at La Crescent westwardly; another from the same boundary at Winona westwardly; another from the same boundary at Stillwater westwardly; another from St. Paul and Minneapolis southerly to the southern boundary of the Territory, and still another from the same places southwestly to the

southern boundary of the Territory in the direction of the mouth of the Sioux Wood River.

As a matter of fact, the three aided lines which touched the eastern boundary of the State, and the two which touch the southern boundary thereof, were so located as to approach such boundaries, respectively, upon a diagonal line. So that if the claim here set up by the plaintiff be correct, namely, that whatever would pass to the Territory or State under the literal reading of the language of the grant can be claimed under it, then there would be no reason why lands within the State of Wisconsin for the three lines touching the eastern boundary, and lands within the State of Iowa for the other two lines touching the southern boundary, could not be successfully claimed by the State of Minnesota and its respective beneficiaries also. The language of the grant in each case is precisely similar. And if it be once admitted, as it must, that the western terminus of the grant for the main line of the St. Paul & Pacific Company was fixed in view of its being upon a State boundary line, then the Southern Minnesota Railroad Company, the Winona & St. Peter Railroad Company, and the Stillwater & Taylor's Falls Railroad Company can, respectively, go into the State of Wisconsin and get lands under their grants, and the Cedar Valley Railroad Company and the St. Paul & Sioux City Railroad Company can go into the State of Iowa for theirs.

The whole argument on behalf of the Manitoba Company is this: The terms of this grant are "*broad enough*" to extend that part of it referring to the main line of the St. Paul and Pacific Company over the boundary of the State of Minnesota into the Territory of Dakota; hence the grantee can go there for lands.

But it is a conclusive answer to this position, that the terms of the grant to the States of Alabama and Mississippi, by the act of 1850, were broad enough to confer

upon those States lands for that portion of the road authorized to be constructed across the States of Kentucky and Tennessee. A *literal* construction of the language there would have sustained the pretensions of the State of Alabama in that particular. So, also, the terms of the grant to the States of Alabama and Florida, by the act of 1856, taken literally, would have been broad enough to permit the State of Alabama to treat the limits of that part of the aided line lying within the State of Florida as overlapping the boundary, and entering its own territory. But the principle established in those cases was that, in application, this breadth of literal meaning must be somewhat narrowed down. So, also, it must be done in respect to all the lines which Congress provided, in the grant to the Territory of Minnesota, should stop at the boundary lines of the future State of Minnesota.

The question is asked, What would have been the result had the enabling act been rejected by the people of the Territory of Minnesota? This question is not a hard one at all. It can be answered without the slightest difficulty. As said before, it must always be remembered that the construction of such a grant is merely the ascertainment of the meaning of Congress. No such thing has ever occurred in the history of the country as the rejection, by the people of a territory, of an act of Congress permitting them to form a State government. Every such offer, on the part of the Federal Government, has been eagerly accepted by the people to whom it has been addressed. When Congress was framing the language of the grant of March 3, 1857, that body had no more reason to doubt, and probably did no more doubt, that the State of Minnesota would speedily come into the Union under the previous enabling act of February 26th, of that year, than that the dome of the Capitol, in which it was sitting, would stand for the ensuing fifteen minutes. Its doubts upon the one subject were probably not one

whit greater than upon the other. It did not, for a moment, have in mind the arising of a case, in which the people of the eastern part of Minnesota Territory should prefer to remain under a territorial organization rather than enter the Union as a full-fledged commonwealth. Hence, it would do great violence to the intent of Congress, in the construction of this act, if the Court were to hold, in construing it, that Congress meant its effect to be otherwise than what it would be if the proposed new State of Minnesota should come into the Union before the grant could be executed.

Hence, whatever might have been the fate of the scheme to bring in the eastern portion of Minnesota Territory as a State, the grant having been made in view of the supposition that it would be so brought in, its construction in any case would have to be the same. If it can, from any circumstance, be inferred that Congress designed this grant to stop at the Bois des Sioux River, then, in no event, could it ever possibly have crossed that stream and gone to the westward of it.

It is true that, in the same act, a grant was made to the State of Minnesota for the construction of a line of road crossing the western boundary of the proposed State, and penetrating that part of the Territory which would be left outside. It was undoubtedly entirely competent for Congress to provide that the State of Minnesota should construct roads across its boundaries, in either direction, and obtain portions of the public domain outside of them to aid in the work. So far as *mere power* is concerned, as the public domain belongs exclusively to the Government, Congress can do with it as it sees fit. There is ample *power* in Congress to grant to the State of Minnesota portions of the public domain in Washington Territory, to aid in the construction of a railroad in Florida. But it is not to the question of *power* that we must here address ourselves. It is not what Congress

might have done, but what Congress *actually intended to do* in the particular case. The conclusion is irresistible that Congress designed the grant for this main line of road to stop at the Bois des Sioux River, and not to pass beyond it.

Appellant's counsel insists that the question here presented arose in the case of Denny *v.* Dobson, reported in the 32d Fed. Rep., 899, 910, in the Circuit Court for the District of Oregon.

That case has no bearing whatever upon the question here involved. It arose under a grant to the Northern Pacific Railroad Company, and not under a grant to a State.

The rule that grants to States to aid in the building of railroads therein are to be confined within the State boundaries, has no application, and has never been construed as having any application to grants made directly to railroad companies where they pass through one or more States.

II.

The grant provides that the line to be aided shall terminate at a "*point*" on the western boundary line of the present State. This means a *single* point. The grantee was not authorized to strike that boundary with its road, and then, turning about, to skirt along it for a distance. In the location of the road, the moment the boundary line was reached, the terminus of the grant was fixed, and the power of further extension was exhausted. The facts concerning the location in this particular, as shown by an inspection of the maps and other documents from the Interior Department which have been put in evidence, are as follows:

In 1857, a line was surveyed terminating on the Bois des Sioux River, at about the centre of section nine, in township numbered one hundred and thirty-one of

range numbered forty-seven, west. A map of that line was prepared by the company, and duplicates of it filed in the office of the Governor of the State of Minnesota and of the Interior Department. *It is important to note that this map represents the line of road as actually touching the stream.* Neither of the maps filed with the Interior Department and the Governor of the State of Minnesota affords the slightest foundation for the pretense that the line, as surveyed, did not actually touch the stream. Various certificates are engrossed upon this map, containing, among other things, the assertion that the line represented thereon was the line from Minneapolis to Breckenridge.

As a matter of fact, the present town of Breckenridge is situated in the section of the same number, in the township next north of that in which the line of 1857 terminated. *In other words, it lies six miles due north of that terminus.*

The Secretary of the Interior appears, from documents introduced in evidence, to have declined reception of the map as the location of the western portion of the road because the lands through which that part of the line extended, had not, at that time, been surveyed. The matter rested here until in the year 1869, when a *second* map was prepared, and tendered to the Secretary, and by that officer accepted as showing the line of definite location. The map of 1869 differs from that of 1857 only in this, *that a line is shown extending from the point where the original survey intersected the river, due northward, to the centre line of section nine in the township immediately north, a distance of six miles.* No change is shown in the route between Minneapolis and the point where the original location touched the Bois des Sioux River. The extension of the original line due north, necessary to complete the location to the *present* town of Breckenridge, runs, in no place to exceed one-half mile distant from the Bois des Sioux. Hence, the location map of

1869 shows a line touching the Bois des Sioux in the centre of section 9, township 131, range 47, thence turning due north and skirting along the boundary line, at no place extending one-half mile distant therefrom, through a space of six miles to the centre of the section of the same number in the town lying next northward. Manifestly, all that part of the line lying northward of the point where the line of location first strikes the western boundary of the State, near the centre of section 9, township 131, range 47, is unauthorized and void.

If the company could increase the grant in this way, to the extent of six times ten sections, it could just as well have located the line to the foot of Big Stone Lake, and then, turning northward, have skirted the western boundary of the State to the mouth of the Sioux Wood River, a distance of fifty or sixty miles, and so increased its grant to the extent of fifty or sixty times ten sections.

The moment the western boundary line was struck in the location, the power to locate under the grant was exhausted, and no farther extension could be made without fresh permission from Congress.

> Atlantic and Pacific R. R. Co., 4 Decisions of the Department of the Interior relating to Public Lands, 458, 460.

The line was, undoubtedly, validly located to the center of the section last mentioned. And, although the map tendered the Government exhibited a location for six miles farther, while such location was good to the center of that section, it was void for the excess, for even the most solemn and formal consent of the Secretary of the Interior could not extend the grant a whit beyond the point at which Congress had directed it to stop.

A glance at the map shows that if the grant for this line is to stop in the center of section 9, township 131, range 47, by no possibility can the lands here in contro-

versy, which are represented on the map by the space colored red, be included within the grant, even if the grant could be construed so as to overlap the boundary and go into Dakota Territory.

The questions involved here are of great importance, as most of the lands subject to the claim, if it be good, have long since passed into private hands, and have been improved by the erection of expensive buildings thereon, fences, and otherwise.

Indeed, the large and flourishing town of Wahpeton, one of the principal places in the Red River Valley, has been built upon lands of this character.

III.

On the 1st day of July, 1868, the St. Paul and Pacific Railroad Company executed a deed of trust to George L. Becker, Horace Thompson, and Samuel J. Tilden, under and by which it conveyed to them all right, title, and interest which the said company then had or might thereafter acquire in and to those certain sections and parts of sections of land granted to the Territory and State of Minnesota by the acts of Congress of March 3, 1857 and 1865, for the purpose of aiding in the construction of said railroad from St. Anthony to Breckenridge, a distance of about 210 miles.

At the time of the execution of said deed of trust the road had not been constructed or even located to Breckenridge.

Rec., 54, 55, 56, 57, 58,'59.

Said acts of 1857 and 1865 prohibited making any disposition of the said granted lands prior to the construction of the section of the road opposite thereto.

See secs. 3 and 4, act of March 3, 1857, 11 U. S. Stat., 195.

See secs. 5 and 6, act of March 3, 1865, 13 U. S. Stat., 526.

The execution of the mortgage was a disposition of said lands in violation of said statutes.

Farnsworth *v.* M. and P. Railroad Co., 92 U. S., 49 and 65.

At the time of the execution of said mortgage the lands joining Breckenridge and west of the Bois Des Souix River, including the land involved in this controversy, were in Indian territory. Section 6 of said act of 1857 (12 U. S. Stat., 624) reads as follows:

"SEC. 6. *And be it further enacted*, That, in case any lands on the line of said road or branches are then Indian territory, no title to the same shall accrue, nor shall the same be entered upon by authority of said Territory or State until said Indian title to the same shall have been extinguished."

The Indian title to said land was not extinguished until 1873.

Northern Pacific Railroad Company *v.* Peronto, 14 N. W. Rep., 103.

Buttz *v.* Northern Pacific Railroad Company, 119 U. S., 55.

In 1871, the Interior Department decided that the grant to the said St. Paul and Pacific Company did not extend westwardly beyond the boundary of the State of Minnesota, or the Bois Des Sioux River; and, after said decision, said company proceeded to adjust its land grant in accordance therewith, and selected lands in its indemnity limits for losses in its place limits.

Rec., 60–1.

The St. Paul and Pacific Railroad Company, the trustees under said mortgage, and all persons then connected with or interested in said railroad company and its land grant, have, ever since 1871, accepted and acquiesced in said decision.

Since the extinguishment of the Indian title, as aforesaid, pre-emption and homestead claims have been taken upon said land, and as above said, the flourishing town of Wahpeton has been builded thereon, and a large amount of said lands, including this land, were, prior to January 15, 1875, selected by the Northern Pacific Railroad Company under directions prescribed by the Secretary of the Interior.

Rec., 43.

Sec. 3, act of July 2, 1864, 13 U. S. Stat., 365.

January 18, 1875, the Northern Pacific Railroad Company sold and conveyed the land involved in this controversy to Ransom Phelps.

The appellant, in 1879, with knowledge of the foregoing facts, at a judicial sale, at which the rule of *caveat emptor* applies, purchased the right, title and interest of the St. Paul and Pacific Railroad Company in, and to, the railroad and lands described in said mortgage. The land involved in this controversy was not described in, or covered, by said mortgage. It has never been patented to the State of Minnesota; and, even if the departmental decision, holding that the grant to the territory or State did not extend beyond the boundaries of the State of Minnesota, was erroneous, the St. Paul and Pacific Company had nothing but an equitable claim to the land.

The said appellant, so purchasing at said judicial sale, with the knowledge of the foregoing facts, continued to recognize and acquiesce in the correctness of the said departmental ruling until April 29, 1884, and we submit that the aforesaid thirteen years of acquiescence and silence ought to, and will, estop appellant from asserting a claim which, on account of said long-continued acquiescence and silence, in connection with rights acquired by others relying thereon, ceased to be an equitable claim.

Bigelow on Estoppel, 3d Ed., pp. 225, 226, 856.

The reasoning of this Court and authorities cited in Phillips *v.* Payne, 92 U. S., 130, *et seq.*, sustain this position.

And we refer the Court to the opinion of the Court below in this case, 26 Fed. Rep., 569.

IV.

Appellant's counsel admits that the land involved in this controversy has been duly selected by the Northern Pacific Railroad Company, under directions prescribed by the Secretary of the Interior, but argues that a selection made under such directions vests no interest in the company until such selection has been approved.

The Northern Pacific granting act authorizes the company to make a selection under the direction of the Secretary of the Interior, and it does not require an approval. In this it is unlike the grants heretofore passed upon by this Court.

Sec. 3, act of July 2, 1864, 13 U. S. Stat., 365.

This proposition, however, is not very material. The appellant must recover, if at all, in this case upon the strength of its own title, or equitable right, and not upon the weakness of that of the appellee.

Respectfully submitted,

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